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WATER MANAGEMENT IN ALBERTA

CHALLENGES FOR THE FUTURE

DISCUSSION DRAFT

OF LEGISLATION

Alberta
ENVIRONMENTAL PROTECTION

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DISCUSSION DRAFT

Introductory Note

The Discussion Draft provides suggested wording for Alberta's proposed water conservation and management legislation. The suggested wording is on the left side of the Discussion Draft, and explanatory notes and questions are on the right side.

The suggested wording has been provided to encourage and facilitate discussion on how proposed water policies, principles and practices could be reflected in legislation. After Albertans have had an opportunity to comment on the discussion package, a legislative Bill will be prepared.

For an explanation of how to provide comments on the Discussion Draft, see the Guide: How to Use this Guide.

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WATER CONSERVATION AND MANAGEMENT ACT

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WATER CONSERVATION AND MANAGEMENT ACT

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

DEFINITIONS

1 In this Act,

(a) "this Act" means this Act and the regulations;

(b) "activity" means

(i) the laying, placing, constructing, building, erecting, maintaining, removing or disturbing of any works or thing,

(ii) the laying, placing, removing or disturbing of any earth, sand, gravel, vegetation or other material, or

(iii) the carrying out of any undertaking, in or on any land, water or water body, including private or riparian lands,

where any component referred to in subclauses (i) to (iii)

▼ To provide certainty and clarity, a number of key terms are defined. In some instances, this will mean that the common dictionary meaning of the term has been changed for the purposes of the Discussion Draft.

(A) alters, may alter or may become capable of altering the flow or level of water, whether temporarily or permanently, including but not limited to water in a water body, by any means, including drainage,

(B) changes, may change or may become capable of changing the location of water or the direction of flow of water, including water in a water body, by drainage or otherwise,

(C) causes, may cause or may become capable of causing the siltation of water or the erosion of any bed, bank or shore of a water body,

(D) causes, may cause or may become capable of causing an effect on the aquatic or riparian environment of a water body, including but not limited to fish habitat;

(iv) the operation of a works, the alteration of the flow, direction of flow or level of water, or the changing of the location of water, for the purposes of drainage, flood control, erosion control, channel re-alignment or any like purpose;

(v) the exploration for groundwater;

(vi) any thing defined as an activity in the regulations;

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▼ An example of an activity would be the laying of any works that may alter the level of water or cause an effect on the aquatic or riparian environment of a water body.

[see: section 1(b)(i), (A) and (D)]

and includes a part thereof;

(c) "adverse effect" means impairment of or damage to;

(d) "to amend" includes to add to or delete from;

(e) "application renewal date" means the date specified in a licence by which the licensee must submit an application for a renewal of the licence;

(f) "approval" means an approval issued under this Act;

(g) "approved water management plan" means a summary document with respect to the conservation and management of water that has been approved by the Minister or the Lieutenant Governor in Council under section 16 (Approved Water Management Plans), consisting of

(i) a summary of the issues considered in a water management plan,

(ii) a description of the area of the Province to which all or part of the water management plan applies,

(iii) a summary of the recommendations of the Minister or Lieutenant Governor in Council, including but not limited to the matters or factors that must be considered in issuing an approval, preliminary certificate or licence in the area of the Province to which the plan applies, or in

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considering a transfer of an allocation of water under a licence;

(h) "aquatic" means related to, living in or located in or on water;

(i) "Board" means the Environmental Appeal Board established under the *Environmental Protection and Enhancement Act*;

(j) "board of directors of an irrigation district" means a board within the meaning of the *Irrigation Act*;

(k) "board of trustees" means a board of trustees within the meaning of the *Drainage Districts Act*;

(l) "Department" means the Department of the Government over which the Minister presides;

(m) "Director" means an individual designated as a Director for the purposes of this Act by the Minister under section 162 (Designation of Officials);

(n) "diversion" means

(i) the impoundment, storage, consumption, taking or removal for any purpose, except for the taking or removal for the sole purpose of drainage, flood control, erosion control or channel realignment,

(ii) any other thing defined as a diversion in the regulations;

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(o) "document" includes but is not limited to a book, sound recording, videotape, film, photograph, chart, graph, map, plan, survey, book of account and any other information that is recorded or stored by any means;

(p) *"Dominion Lands Act"* means Chapter 20 of the Statutes of Canada, 1908;

(q) *"Dominion Water Power Act"* means Chapter 210 of the Revised Statutes of Canada, 1927;

(r) "drainage district" means a drainage district within the meaning of the *Drainage Districts Act*;

(s) "environment" means the components of the earth and includes

(i) air, land and water,

(ii) all layers of the atmosphere,

(iii) all organic and inorganic matter and living organisms, and

(iv) the interacting natural systems that include components referred to in subclauses (i) to (iii);

(t) "Environmental Appeal Board" means the Environmental Appeal Board established under the *Environmental Protection and Enhancement Act*;

(u) "Government" means the Government of Alberta;

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(v) "groundwater" means all water under the surface of the ground;

(w) "household" means a household within the meaning of the regulations;

(x) "household and related purposes" means the use of up to 50 cubic metres of water per week (10,000 gallons) to a maximum of 2,500 cubic metres (2 acre-feet) of water per year per household for the purposes of human consumption, sanitation, fire prevention, watering of stock and irrigation of a garden, lawn and trees;

(y) "household user" means a person who diverts water for household and related purposes under section 25 (Right to Divert Water Without a Licence);

(z) "inspector" means an individual who has been designated as an inspector under section 162 (Designation of Officials);

(aa) "instream need" means the amount and quality of water determined by the Director and based on information available to the Director, to be necessary for the

(i) protection of a water body or an aquatic or riparian ecosystem, or any part thereof,

(ii) protection of direct human uses of water, including but not limited to, recreational, transportation, and waste assimilation uses, or

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(iii) management of fish or wildlife,

and may include minimum flow or water level requirements;

(bb) "investigator" means an individual who has been designated as an investigator under section 162 (Designation of Officials);

(cc) "*Irrigation Act* (Canada)" means Chapter 104 of the Revised Statutes of Canada, 1927;

(dd) "irrigation district" means an irrigation district within the meaning of the *Irrigation Act*;

(ee) "junior licence" means a licence that has a sequentially higher priority number[1] than another licence;

(ff) "junior licensee" means a licensee who holds a licence that has a sequentially higher priority number than another licence;

(gg) "justice" means a justice of the peace or a provincial court judge, and includes 2 or more justices where 2 or more justices are, by law, required to act or, by law, act or have jurisdiction;

(hh) "land" means the definition of land within the meaning of the *Land Titles Act*;

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[1] This means a number assigned to an application for a licence according to the date and time of receipt by the Director, under section 28. A licence with a sequentially higher priority number will have a lower "priority".

(ii) "licence" means a licence issued under this Act and any authorization, permit, licence or other authority granted before April 1, 1931, pursuant to the *Irrigation Act* (Canada), the *Dominion Water Power Act* or the *Dominion Lands Act*;

(jj) "licensee" means a person who holds a valid and subsisting licence, including a licence that has been suspended but not cancelled under this Act;

(kk) "local authority" means

(i) the corporation of a city, town, village, summer village, county or municipal district,

(ii) in the case of an improvement district or special area, the Minister of Municipal Affairs,

(iii) a settlement under the *Metis Settlements Act*,

(iv) a regional services commission established under the *Regional Municipal Services Act*,

(v) in the case of an irrigation district, the board of directors of an irrigation district,

(vi) in the case of a drainage district, the board of trustees,

(vii) the local board of a health unit,

(viii) any other local authority defined as a local authority in the regulations,

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but for the purposes of section 95(3) (Flood Risk Areas) does not include an entity referred to in subclause (v), (vi), (vii) or (viii);

(ll) "major river basin" means

(i) the Peace/Slave River Basin,

(ii) the Athabasca River Basin,

(iii) the North Saskatchewan River Basin,

(iv) the South Saskatchewan River Basin, and

(v) the Milk River Basin,

as specified in the regulations;

(mm) "Minister" means the member of the Executive Council charged by the Lieutenant Governor in Council with the administration of this Act;

(nn) "municipal water" means municipal water within the meaning of the regulations;

(oo) "peace officer" means a peace officer within the meaning of the *Police Act*;

(pp) "person responsible" means a person responsible within the meaning of the regulations;

(qq) "place" includes but is not limited to any land, water, water body, building, structure, machine, aircraft,

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vehicle or vessel, whether above or below the ground;

(rr) "preliminary certificate" means a preliminary certificate issued under section 71 (Issuance of Preliminary Certificates) of this Act;

(ss) "priority number" means a number that has been assigned to an application for a licence under section 28 (General Priority of Rights);

(tt) "processed water" means processed water within the meaning of the regulations;

(uu) "proponent" means a person, the Government, a Government agency, a government of another jurisdiction or an agency of that government that undertakes

(i) a proposed activity,

(ii) a proposed diversion of water, or

(iii) a proposed operation of works for the diversion of water;

(vv) "proposed activity" means

(i) a planned activity that has not been commenced,

(ii) an activity that is being carried on and for which an approval is required but has not been obtained, or

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(iii) a change to an activity where the change is one to which section 42 (General Amendment of Approvals) applies, and in the opinion of the Director is of a substantial nature;

(ww) "proposed diversion of water" means

(i) a planned diversion of water that has not been commenced,

(ii) a diversion of water that is being carried on and for which a licence, other than a renewal, is required, but has not been obtained, or

(iii) a change to a diversion of water where the change is one to which section 56 (General Amendment of Licences) applies, and in the opinion of the Director is of a substantial nature;

(xx) "proposed operation of a works for the diversion of water" means

(i) a planned operation of a works for the diversion of water that has not been commenced,

(ii) an operation of a works for the diversion of water that is being carried on and for which a licence, other than a renewal, is required, but has not been obtained, or

(iii) a change to an operation of a works for the diversion of water where the change is one to

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which section 56 (General Amendment of Licences) applies, and in the opinion of the Director is of a substantial nature;

(yy) "riparian" means related to or living or located on the bank of a water body;

(zz) "search warrant" means a search warrant issued by reason of the operation of section 3 of the *Provincial Offences Procedure Act*;

(aaa) "senior licence" means a licence that has a sequentially lower priority number than another licence;

(bbb) "senior licensee" means a licensee whose licence has a sequentially lower priority number than another licence;

(ccc) "statement of concern" means a statement of concern made under section 112 (Statement of Concern) of this Act;

(ddd) "telecopier" means a machine or device that electronically transmits a copy of a document, picture or other printed material by means of a telecommunication system;

(eee) "treated water" means treated water within the meaning of the regulations;

(fff) "undertaking" means

(i) a project established, proposed to be established,

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required to be established or carried on pursuant to this Act by any person, and

(ii) anything that is defined as an undertaking in the regulations;

(ggg) "university" means the Board of a University as incorporated under the *Universities Act;*

(hhh) "vehicle" means a device in, on or by which a person or thing may be transported or drawn;

(iii) "water" means all water on, above or under the surface of the ground, whether in liquid, gaseous or solid state, including but not limited to ice;

(jjj) "water body" means any location where water flows or is present, whether or not the flow or the presence of water is continuous, intermittent or occurs only during a flood, and includes but is not limited to wetlands;

(kkk) "Water Conservation Guideline" means a Water Conservation Guideline within the meaning of the regulations;

(lll) "water conservation and management objective" means a water conservation and management objective determined under section 20 (Water Conservation and Management Objectives);

(mmm) "water management plan" means any plan or policy with respect to the conservation and management of water;

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(nnn) "water-power development" means the physical structures required for the storage or diversion of water for the production of power and includes but is not limited to

(i) the dams or other diversion works, the power-house, the conduits conducting water thereto,

(ii) all hydraulic or electrical machinery, appliances, fixtures, equipment and appurtenances,

(iii) the land and rights of way required in connection therewith, and

(iv) the clearings, roads and trails that are required to be constructed or are still used or useful in connection with the physical structures;

(ooo) "works" means any

(i) plant, structure, device or contrivance, or part thereof, including man-made dams,

(ii) land associated with any plant, structure, device or contrivance, or part thereof,

(iii) mitigative measures associated with any plant, structure, device or contrivance, or part thereof, or

(iv) thing that is defined as a "works" in the regulations;

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Purpose of Act

2 The purpose of this Act is to support and promote the conservation[2] and management of water, including the wise allocation and use of water while recognizing

(a) the need to manage and conserve water resources to sustain our environment to ensure a healthy environment and economy, and a high quality of life in the present and the future;

(b) the need for an integrated approach and comprehensive, flexible systems based on sound planning, regulatory actions and market forces;

(c) the shared responsibility of all Alberta citizens for the conservation and wise use of water and their role in providing advice with respect to water management planning and decision-making;

(d) the importance of working co-operatively with the governments of other jurisdictions[3] with respect to transboundary water management;

(e) the important role of comprehensive and responsive action in administering this Act.

[2] The term "conservation" is used in the Draft to include "preservation" and "protection".

[3] Note that "governments of other jurisdictions" includes other provinces, territories, the Government of Canada and other governments (such as the U.S.).

▼ The general principles on which the Discussion Draft is based are set out under this purpose clause. These principles can be used in interpreting the Discussion Draft if the intent of a provision is unclear.

The term conservation includes "preservation and protection" where it is used in the Discussion Draft.

For more information refer to the Guide: Vision and Principles.

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Property and Right Vested in Alberta Crown

3 The property in and the right to the diversion and use of all water in the Province is vested in Her Majesty in right of Alberta.

- The Crown in right of Alberta has legal title to all water in Alberta, and is responsible for ensuring that water is conserved and managed for the present and future.

Crown is Bound

4 Except where this Act specifically provides to the contrary, the Crown is bound by this Act.

- The Crown, which includes the governments of Alberta, Canada, other provinces, territories and the United Kingdom, is bound by the requirements of the Discussion Draft.

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PART 1 - MINISTERIAL RESPONSIBILITY, CONSULTATION AND COOPERATION

DIVISION 1 - MINISTERIAL RESPONSIBILITY

Administration of Act

5 Except as otherwise provided in this Act, the Minister is charged with the administration of this Act.

Powers and Duties of Minister

6 The Minister

(a) is responsible for the establishment of policies, programs, services and administration of the Department with respect to matters pertaining to the conservation and management of water;

(b) shall, as the representative of the Government, maintain a continuing liaison and coordinate with

(i) the governments of other jurisdictions or agencies of such governments,

- Part 1 sets out provisions required for the general administration of the Discussion Draft. Additional administrative provisions are included in Part 10 (General Administrative Matters).
- Division 1 sets out the broad responsibilities and powers of the Minister of Environmental Protection. The Minister will be responsible for administering the new water conservation and management legislation.

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(ii) Government agencies and other departments, and

(iii) local authorities in Alberta,

in relation to water conservation and management matters under the administration of the Minister;

(c) may, with respect to the conservation and management of water, compile, study and assess information, and prepare inventories by any means, including but not limited to examinations, surveys, monitoring or investigations, with a view to providing information to Government agencies, other Government departments and the public;

(d) may carry out and may participate in research projects on matters pertaining to the conservation and management of water;

(e) shall maintain a library consisting of publications and other information on matters pertaining to the conservation and management of water;

(f) shall, unilaterally or in co-operation with Government agencies and other Government departments,

(i) develop, publish and distribute educational materials with respect to water conservation and management, and

(ii) co-ordinate, develop and deliver educational programs and services to assist Albertans to better

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understand water conservation and management and become responsibly involved in the conservation of water;

(g) shall generally do any acts the Minister considers necessary to promote the conservation and management of water.

Economic Instruments

7 The Minister may, in accordance with the regulations, establish programs and other measures for the use of economic and financial instruments and market-based approaches, including without limitation

(a) incentives,

(b) subsidies,

(c) fees,

(d) differential levies, and

(e) charges for water,

for the purposes of supporting and promoting the conservation and management of water, including the wise allocation and use of water, in a cost effective manner, and for providing methods for the financing of programs and other measures.

▼ Water conservation and management goals may be achieved through the use of economic and financial instruments, and market-based approaches.

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DIVISION 2 - CONSULTATION AND COOPERATION

Advisory Committees

8(1) The Minister may

(a) establish advisory committees and retain experts to report to the Minister with respect to

(i) the content and administration of this Act, and

(ii) any of the policies, programs, services or other matters under the Minister's administration with respect to the conservation and management of water;

and

(b) specify the functions that the committees and experts are to perform, including but not limited to the seeking of input from the public, and the manner in which and time period within which those functions are to be performed.

(2) The report of a committee established pursuant to subsection (1), including the recommendations and the reasons for them, shall be made public in the manner provided for in the regulations.

- Division 2 reflects the Government's commitment to public consultation and to working cooperatively with other Government departments and other governments.

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Interdepartmental Committees

9(1) The Minister may establish one or more interdepartmental committees, consisting of individuals who are employees or agents of, or under contract to the Government or a Government agency, to co-ordinate and review matters related to this Act and to advise the Minister on matters related to this Act and the conservation and management of water.

(2) The Director may establish one or more interdepartmental committees, consisting of individuals who are employees or agents of, or under contract to the Government or a Government agency, to advise the Director on matters related to this Act that are referred to the committees.

(3) An interdepartmental committee may make rules governing its conduct, procedures and meetings.

(4) An interdepartmental committee shall make and submit to the Minister or the Director, as the case may be, reports and recommendations on specific matters reviewed by the committee.

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Referral by Director Where Environmental Protection And Enhancement Act Applicable

10(1) Where a Director is of the opinion that an activity, diversion of water or operation of a works for the diversion of water requires an approval under the *Environmental Protection and Enhancement Act,* (s)he

(a) shall refer the activity, diversion or operation of a works for review, and

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- This provision reflects the importance of managing water quality and quantity together by creating a linkage to the Alberta *Environmental Protection and Enhancement Act*, as amended, *(EPEA)*.

(b) may make any recommendations (s)he considers appropriate,

to a Director under the *Environmental Protection and Enhancement Act*.

(2) A referral may be made under subsection (1) whether or not, under this Act,

(a) an approval will be or has been issued with respect to the activity, or a term or condition of an approval applies to the activity, or

(b) a licence or preliminary certificate will be or has been issued with respect to the diversion of water or operation of works for the diversion of water, or a term or condition of a licence or a preliminary certificate applies to the diversion or operation of a works.

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Agreements

11(1) The Minister may enter into agreements containing any terms and conditions, including but not limited to provisions for sharing of costs, with

(a) a person,[1]

(b) a Government agency, or

[1] "Person" in this section includes an "individual" and "corporation", as well as "heirs, executors, administrators or other legal representatives of a person", because of the definition of "person" in section 25(1)(p) of the *Interpretation Act*.

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▼ This provision allows the Minister to enter into agreements with other governments and persons regarding water conservation and management.

(c) the government of another jurisdiction or an agency of such a government,

with respect to

(i) any matter pertaining to the conservation and management of water, including but not limited to the supply and control of water,

(ii) the use of works,

(iii) the operation, maintenance, repair, control, replacement or removal of works,

(iv) flood control and management, and

(v) interjurisdictional waters.

Agreements With Land Owners

12(1) In order to promote the conservation and management of water, the Minister may enter into an agreement with a registered owner of land to restrict the purposes for which the registered owner's land may be used by the registered owner and the successors in title of the registered owner.

(2) An agreement under this section may provide for payment of compensation by the Government or by the registered owner of the land.

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(3) An agreement under this section may be registered under the *Land Titles Act* or the regulations under the *Metis Settlements Act,* as the case may be.

(4) An agreement that is registered as provided for in subsection (3) runs with the land and the Minister may enforce it whether it is positive or negative in nature, and notwithstanding that the Government does not have an interest in any land that would be accommodated or benefited by the agreement.

(5) On the expiration or termination of an agreement that is registered under subsection (3), the Registrar of Land Titles or the Registrar of the Metis Settlements Land Registry, as the case may be, shall, on being directed to do so by the Minister, cancel the registration of the agreement.

(6) This section applies notwithstanding section 52 of the *Land Titles Act*.

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Grants

13(1) The Minister, subject to any terms and conditions the Minister considers appropriate, and in accordance with the regulations,

(a) may make payment of a grant with respect to any matter pertaining to the conservation and management of water, including but not limited to

(i) the supply and control of water, or

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▼ This provision enables grants to be provided for matters related to the conservation and management of water. It also specifies to whom a grant may be made.

(ii) flood control and management;

(b) may require

(i) an applicant for a grant to enter into an agreement with respect to the grant, and

(ii) any person signing on behalf of a person, university or other educational institution to sign a guarantee to repay the grant to the Provincial Treasurer in the event that the Government commences an action in debt against the person, university or other educational institution under subsection (5).

(2) A grant under subsection (1) may be made to any

(a) person,

(b) university, or

(c) other educational institution.

(3) An application for a grant under this section shall be made in accordance with the regulations.

(4) Where a grant is made, the person, university or other educational institution receiving the grant shall

(a) upon written demand by the Minister, provide an accounting of the money provided, and

DISCUSSION DRAFT NOTES

(b) where the grant money has not been used for the purpose for which the grant money was provided, repay the grant money to the Provincial Treasurer.

(5) Where a person, university or other educational institution fails to comply with subsection (4), all money provided under the grant is recoverable by the Government in an action in debt against the person to whom, or the university or other educational institution to which the grant was made, or any person who has signed a guarantee with respect to the grant.

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PART 2 - PLANNING AND ENVIRONMENTAL ASSESSMENT

DIVISION 1 - PLANNING

DISCUSSION DRAFT

Water Management Plans

14(1) The Minister or Director may develop a water management plan.

(2) In developing a water management plan, the Minister or Director

(a) may adopt an integrated approach to planning with respect to water, land and other resources;

(b) may cooperate with

(i) any persons,

(ii) local authorities,

- Part 2 includes planning processes and the Environmental Assessment Process. These processes will be used to guide water conservation and management decision-making.

- To ensure that water is conserved and managed to meet current and future needs, Division 1 allows for the establishment of several water conservation and management planning tools. These tools include water management plans, water management areas, instream needs, and water conservation and management objectives and guidelines.

  For more information refer to the Guide: Planning and Environmental Assessment.

- This provision provides for the development of water management plans, including site specific plans, river basin plans, groundwater management plans and lake management plans. These plans may be considered when making water management decisions such as: issuing approvals, preliminary certificates or licences; approving a transfer of a licence; or establishing a moratorium.

  [see: sections 37, 71, 52, 82, 54]

  The Government is committed to taking an integrated approach to planning in respect of water, land and other resources.

(iii) the governments of other jurisdictions or agencies of such governments, and

(iv) Government agencies and other Government departments;

(c) may carry out any studies that the Minister or Director considers appropriate;

(d) may consider any information, documents or other water and land management plans; and

(e) shall engage in such public consultation as the Minister or Director considers appropriate during the development of the water management plan.

For the definition of a "water management plan" see: section 1(mmm).

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Water Management Areas for Development of Water Management Plans

15 The Minister may establish a water management area for the purposes of developing or implementing a water management plan or approved water management plan.

- Water management areas may be used to set out geographical boundaries within which a water management plan or approved water management plan may be developed or implemented.

Approved Water Management Plans

16(1) The Minister or the Lieutenant Governor in Council may approve a water management plan or part of a water management plan subject to any terms and conditions the Minister or the Lieutenant Governor in Council, as the case may be, considers appropriate.

- In some cases, the Minister or Lieutenant Governor in Council may approve a water management plan. Once a water management plan has been approved, a summary document which is referred to as an "approved water management plan" must be prepared. These approved plans

(2) A water management plan that has been approved under subsection (1) is an "approved water management plan".

must be considered when making water management decisions such as: issuing approvals, preliminary certificates or licences; approving a transfer of a licence; or establishing a moratorium.

[see: sections 37, 71, 52, 82, 54]

For the definition of an "approved water management plan" see: section 1(g).

Amendment or Cancellation of an Approved Water Management Plan

17(1) The Minister may amend a term or condition of an approved water management plan or cancel the approval of an approved water management plan that has been approved by the Minister under section 16 (Approved Water Management Plans).

(2) The Lieutenant Governor in Council may amend a term or condition of an approved water management plan or cancel the approval of an approved water management plan that has been approved under section 16 (Approved Water Management Plans).

(3) Where the approval of an approved water management plan has been cancelled under subsection (1) or (2), the approved water management plan is null and void.

(4) Notwithstanding subsection (1) and (2), the Director may amend an approved water management plan in order to

(a) correct a clerical error,

▼ Amendments to an approved plan or cancellation of the approval of an approved water management plan are allowed for under this provision.

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(b) make minor amendments that, in the opinion of the Director, do not affect the substance of the approved water management plan.

Notice of an Approved Water Management Plan

18 The Director shall provide notice of

(a) the approval of a water management plan,

(b) the amendment of an approved water management plan under section 17(1) or (2) (Amendment or Cancellation of an Approved Water Management Plan), and

(c) the cancellation of the approval of an approved water management plan,

in accordance with the regulations.

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- This provision ensures that notice is given to the public where a plan has been approved, an approved plan is amended or the approval of a plan is cancelled.

Instream Need

19(1) The Director may determine an instream need.

(2) The Director shall engage in such public consultation as the Director considers appropriate during the determination of an instream need.

(3) Information on an instream need developed by the Director shall be made available to the public in accordance with the regulations.

- Instream needs are the water quality conditions and quantities of water that are needed to maintain the ecological integrity of rivers, lakes and riparian environments and meet the demands for other uses of water, including fisheries protection and recreational uses. The instream need may be implemented through one or more mechanisms, such as, putting terms and conditions in licences, issuing Crown licences, creating reservations of water, holding back water on a transfer of a licence, or

developing water conservation and management objectives and guidelines.

[see: sections 52, 52(2), 70, 84, 20]

For the definition of an "instream need" see: section 1(aa).

Water Conservation and Management Objectives and Guidelines

20(1) The Minister may, after having engaged in such public consultation as the Minister considers appropriate, prepare water conservation and management objectives or guidelines in qualitative or quantitative terms for the purposes of

(a) implementing an instream need,

(b) protecting

(i) a water body or an aquatic or riparian ecosystem or any part thereof, or

(ii) direct human uses,

(c) managing fish or wildlife,

(d) water conservation and management, or

(e) any other matter the Minister considers appropriate,

for all or part of Alberta.

▼ Under this provision water conservation and management objectives and guidelines may be developed. Generally these objectives will be implemented through terms and conditions in licences, reservations of water, moratoria, or a holdback on a transfer of a licence. As well, specific objectives (section 20(1)(a), (b) and (c)) may be implemented through a Crown licence.

[see: sections 52, 70, 54, 84, 20, 52(2)]

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(2) A water conservation and management objective prepared under this section shall be made available to the public in accordance with the regulations.

DIVISION 2 - ENVIRONMENTAL ASSESSMENT PROCESS

DISCUSSION DRAFT

▼ Division 2 provides a means of reviewing proposed water management projects to assess their potential impact on the environment. This process, which is referred to as the Environmental Assessment Process, is set out under the Alberta *Environmental Protection and Enhancement Act,* as amended, *(EPEA)*.

For more information refer to the Guide: Planning and Environmental Assessment.

See also:

- Part 2, Division 1, *EPEA*
- Environmental Assessment (Mandatory and Exempted Activities) Regulation, AR 111/93
- Environmental Assessment Regulation, AR 112/93

For the definition of:
- "proponent" see: section 1(uu)
- "proposed activity" see: section 1(vv)
- "proposed diversion of water" see: section 1(ww)
- "proposed operation of a works for the diversion of water" see: section 1(xx)

Compliance with Environmental Assessment Requirements

21(1) Unless the regulations provide otherwise, the Director may not issue an approval, preliminary certificate or licence, or approve a transfer of an allocation of water under a licence where the Director is of the opinion that this Division and Division 1 of Part 2 of the *Environmental Protection and Enhancement Act* (Environmental Assessment Process), if applicable, have not been complied with.

(2) Notwithstanding subsection (1), the Director may issue an approval, a preliminary certificate or a licence to enable a proponent to comply with this Division and with Division 1 of Part 2 of the *Environmental Protection and Enhancement Act* (Environmental Assessment Process).

- Prior to the issuance of any approval, preliminary certificate or licence, or approval of a transfer of a licence, the Director must ensure that the Environmental Assessment Process, if applicable, has been complied with. In some cases an approval, preliminary certificate or licence may need to be issued to enable a proponent to comply with the Environmental Assessment Process.

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Referral for Environmental Assessment

22(1) Where the Director is of the opinion that the potential environmental impacts of a proposed activity, proposed diversion of water or proposed operation of a works for the diversion of water warrant further consideration, the Director may refer the proponent or the proposed activity, diversion or operation to the designated Director for assessment under Division 1 of Part 2 of the *Environmental Protection and Enhancement Act* (Environmental Assessment Process).

(2) Where a referral has been made under subsection (1), sections 41 to 51, 52(2) and 53 to 55 of the *Environmental Protection and Enhancement Act* apply to the environmental assessment of the

- This provision allows for proposed activities or proposed diversions, under the Discussion Draft, to be referred to the designated Director under *EPEA,* where there are potential environmental impacts that warrant further consideration.

proposed activity, diversion of water or operation of a works for the diversion of water.

Powers of Minister

23 Unless the Minister has ordered that no approval, preliminary certificate or licence will be issued under section 38, 72 or 55 (No Approval, Preliminary Certificate, Licence on Minister's Order), or that no transfer of an allocation of water under a licence will be approved under section 83 (No Transfer on Minister's Order), where the designated Director under the *Environmental Protection and Enhancement Act* submits an environmental impact assessment report to the Minister, the Minister may advise the applicant, where an application has not already been made, that the applicant may apply for an approval, licence or transfer of an allocation, as the case may be, or that an application can proceed, under this Act.

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- After the Environmental Assessment Process is completed, the proponent may apply for the proponent's approval, licence or transfer of a licence.

PART 3 - RIGHT TO DIVERT WATER AND PRIORITY OF RIGHTS

- This Part sets out situations under which water may be diverted under the Discussion Draft. As well, it provides details on the priority system and how priorities will be administered during times of shortages.

DIVISION 1 - RIGHT TO DIVERT WATER AND GENERAL PRIORITY OF RIGHTS

- Division 1 sets out the different ways water may be diverted pursuant to the Discussion Draft. Generally a licence will be required for any diversion of water. However, a diversion for "household and related purposes" does not require a licence. The rights that a riparian owner or occupant has in relation to the diversion of water are also clarified under this Division.

  For more information refer to the Guide: Surface Water and Groundwater Rights.

Protection of Existing Water Rights

24 Every person who on ---- (the date of proclamation of this Act) was entitled to the diversion of water by virtue of an authority, permit, interim licence or licence granted under the *Water Resources Act*, *Irrigation Act* (Canada), the *Dominion Lands Act* or the *Dominion Power Act* may continue to exercise the right in accordance with the terms and conditions on which it was granted, and this Act applies to that right as long as this Act is not inconsistent with the terms and conditions on which the right was granted.

- This provision confirms the Government's commitment that existing rights which are in good standing will be protected. This commitment is in keeping with the long history of water rights and the significant investments which have been made in relation to those water rights.

Right to Divert Water Without a Licence

25(1) A person who owns or occupies land that adjoins a river, stream, lake, natural watercourse or other natural water body

(a) has the right to commence and continue the diversion of the water that adjoins that land for household and related purposes, including water that has been reserved under this Act, and

(b) may not obtain a licence for the diversion of water that adjoins that land for household and related purposes under this Act.

(2) A person diverting water in accordance with subsection (1) may pump or otherwise convey water to the point of use without a licence.

(3) A person who owns or occupies land under which groundwater exists

(a) has the right to commence and continue the diversion of the groundwater that (s)he is able to capture for household and related purposes, and

(b) may not obtain a licence for the diversion of such groundwater for household and related purposes under this Act.

▼ Under the existing *Water Resources Act (WRA)*, a licence is not required for domestic use of water. This principle has been clarified and carried forward under this provision. The right to divert water for "household and related purposes" applies to both surface water and groundwater, and takes priority over all licensed diversions of water.

[see: section 28(4)]

For the definition of:
- "household" see: section 1(w)
- "household and related purposes" see: section 1(x)
- "household user" see: section 1(y)

Is there another definition of "household and related purposes" that you think provides a reasonable level of protection?

Should the definition differ in various parts of Alberta to reflect differences in climate and water supply?

How should diversions of water between 2,500 cubic metres (2 acre-feet) and 6,200 cubic metres (5 acre-feet) be protected?

(For more information refer to the Guide: Surface Water and Groundwater Rights - Household and Related Purposes.)

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Right to Divert by Riparian Owner or Occupant

26(1) Notwithstanding the common law, a riparian owner or occupant has the right to divert water only for household and related purposes as specified under section 25 (Right to Divert Water Without a Licence) of this Act, and may not divert water for any other purpose without a licence.

(2) With respect to a diversion of water, a riparian owner or occupant may commence an action only in respect of an unauthorized or unlicensed diversion of water.

(3) Nothing in this Act shall be construed so as to repeal, remove or reduce any rights held by a riparian owner or occupant at common law, other than the right to the continued flow or diversion of water.

▼ The *WRA* replaced the common law approach of riparian rights, however, over the years the extent of the impact of the *WRA* on riparian rights has been very uncertain. This provision clarifies what rights a riparian owner or occupant has in relation to the diversion of water.

Right to Divert Water With an Approval or Licence

27 A person has the right to commence and continue the diversion of water

(a) in accordance with the terms and conditions of a licence that has been issued to that person, or

(b) in accordance with the terms and conditions of an approval that has been issued to that person.

▼ Generally, other than diversions pursuant to section 25 (Right to Divert Water Without a Licence), section 26 (Right to Divert by Riparian Owner or Occupant) and any exemptions under section 50 (Exemption from the Requirement to Obtain a Licence), licences will be required for the diversion of water. As well, in some cases, it may be appropriate to allow a small quantity diversion for a short period of time under a term or condition of an approval.

For the provisions relating to approvals and licences refer to Part 4 (Approvals, Preliminary Certificates and Licences).

General Priority of Rights

28(1) Applications for licences under section 51 (Application for a Licence) that, in the opinion of the Director are complete, in accordance with criteria specified in the regulations, have priority among themselves according to the dates and times of their receipt by the Director, and shall be numbered consecutively in accordance with the date and time they were received.

(2) A number assigned to an application for a licence under subsection (1) shall be the number of a licence that is issued pursuant to that application.

(3) Licensees have priority among themselves according to the number that has been assigned to their licences under this section, so that a licensee with a licence that has a lower number (a senior licensee) is entitled to divert water in accordance with the terms and conditions of his or her licence before a licensee with a licence that has a higher number (a junior licensee) has any right to divert water.

(4) A person who diverts water for household and related purposes under section 25 (Right to Divert Water Without a Licence) has priority over any licensee who has been issued a licence under this Act or any other Act at any time.

(5) Notwithstanding this section, a licence that has been issued to Her Majesty in right of Alberta for the purposes of implementing an instream need or a water conservation and management objective under section 52(2) (Issuance of Licences) has priority over any licence issued at any time under this Act, except for another licence issued to Her Majesty for the purposes of implementing an instream

▼ Under the existing *WRA*, water rights are based on the principle of "first in time, first in right" with the priority of right established by the date the application is filed. This provision carries forward this principle.

For greater clarity regarding what constitutes a completed application, criteria will be included in the regulations.

For the definition of:
- "junior licence" see: section 1(ee)
- "junior licensee" see: section 1(ff)
- "senior licence" see: section 1(aaa)
- "senior licensee" see: section 1 (bbb)

This provision also clarifies that household and related users, as set out under section 25 (Right to Divert Water Without a Licence), are protected and have priority over any other licensee.

Are there some cases where household users should not have priority?

▼ Subsection (5) relates to section 52(2) (Issuance of Licences) which allows a licence to be issued to the Crown in right of Alberta for the purposes of meeting an instream need or certain water conservation and management objectives. This provision reflects the policy that licences for instream protection will take precedence over licences issued under the

need or a water conservation and management objective.

(6) Records contained in the registry established for water rights are conclusive evidence of the extent and priority of rights held by a licensee.

(7) The Minister may correct an error with respect to a number assigned to an application or a licence under subsection (1) or (2).

Limit on Licensees' Rights

29(1) When a licensee's works are not of sufficient capacity to carry the diversion of water to which the licensee is entitled to under the terms and conditions of his or her licence, his or her right under the licence shall be limited to the quantity of water that the works are capable of carrying.

(2) In case of a dispute as to the capacity of a licensee's works, the Director may order an inspection to be made of the works.

(3) The report and finding of an inspector as to the capacity of the works is, for the purpose of this section, final and conclusive.

proposed legislation. They will not take priority over existing licences issued under the *WRA* except where terms and conditions have been included in existing licences for instream protection.

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DIVISION 2 - ADMINISTRATION OF PRIORITY OF RIGHTS

Administration of Priority of Rights

30(1) In the event of a dispute with respect to priority of rights, the Director may determine the priority of rights within a water management area established under section 33 (Water Management Areas Established by the Director) or any other geographical area considered appropriate by the Director.

(2) An inspector or the Director may issue a water management order for the purposes of administration of priority of rights, where the inspector or the Director, as the case may be, is of the opinion that the issuance of the order will provide a remedy with respect to priority of rights.

(3) Where a person has been issued a water management order with respect to priority of rights, that person shall not divert water except in accordance with the terms and conditions specified in the water management order, until further notice is provided by the Director.

(4) Where the Director has received a complaint with respect to priority of rights, and an inspector or investigator is of the opinion that a diversion is affecting the rights of a senior licensee or household user, the inspector or investigator may interrupt the diversion and cause the works of the person responsible for the diversion to be closed, or take any other action that is necessary to ensure that the supply of water to which

- Under this Division, the administrative process of "water mastering" has been carried forward from the *WRA*. This process allows the principle of "first in time, first in right" to be enforced during times of general shortages.

- Generally, the following steps will be followed when administration of the priority system is required:

  - when shortages are occurring the Director will informally request that persons comply with the priority system

  - where persons do not comply with an informal request, an inspector or the Director may issue a water management order

  - where a water management order has been issued, the licensee is only entitled to divert water in accordance with the order

  For the provisions relating to water management orders refer to Part 7 - Division 2 (Removal of Works and Obstructions and Water Management Orders).

(a) the senior licensee is entitled, passes and flows to his or her works,

(b) the household user is entitled, can be diverted by the householder user.

Reporting Requirements

31 The Director may at any time, for the purposes of administering priority of rights, require a household user or licensee to submit to the Director any information respecting the diversion of water by that household user or licensee, including but not limited to the quantity of water diverted and the time the diversion commences or stops.

Agreements to Share Water

32(1) A licensee may exchange with and loan to another licensee on the same water body all or part of the water the licensee is entitled to divert under his or her licence, for up to one year, where

(a) the rights of any senior licensee or household user are not adversely affected by the exchange and loan,

(b) there are no adverse effects on the water body, or the aquatic or riparian environment, including but not limited to fish habitat,

(c) a written agreement is made and signed by all the

▼ During times of shortages, such as seasonal fluctuations, sharing among licensees will be encouraged and allowed. Licensees may enter into agreements to share water where there are no adverse effects on the water body, or the aquatic or riparian environment, and the rights of other water users are not affected.

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licensees participating in the exchange and loan of the water, and

(d) a copy of the written agreement is provided to the Director upon the request of the Director.

(2) An agreement made under this section must be made in accordance with any applicable regulations.

(3) Where the Director is of the opinion that the exchange and loan causes or may cause

(a) the rights of any senior licensee or household user to be adversely affected, or

(b) an adverse effect on the water body or the aquatic or riparian environment, including but not limited to fish habitat,

the Director may direct the suspension of the operation of the agreement for any period of time the Director considers appropriate, or declare the written agreement null and void.

(4) Where the Director has

(a) directed the suspension of an agreement, no water may be exchanged and loaned during the period the agreement is suspended,

(b) declared an agreement null and void, no water may be exchanged and loaned under the agreement.

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Water Management Areas Established by the Director

33 The Director may establish water management areas for the purposes of

(a) administering priority of rights,

(b) establishing groundwater management areas,

(c) exchanging and loaning water,

(d) establishing a moratorium, and

(e) any other matter specified in the regulations.

▼ These water management areas are used to delineate geographical boundaries for various purposes as set out under this provision.

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PART 4 - APPROVALS, LICENCES AND PRELIMINARY CERTIFICATES

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DIVISION 1 - APPROVALS

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- Part 4 provides the administrative provisions for various authorizations issued under the Discussion Draft. Included are approvals, licences and preliminary certificates. This Part also includes provisions relating to the conveyance of land or disposition of an undertaking, and the declaration of water bodies as natural water bodies.

  For more information refer to the Guide: Approvals and Licences.

  For notice and appeal provisions relating to approvals, licences and preliminary certificates, refer to Part 8 (Notice and Environmental Appeal Board).

- Under Division 1, the administrative provisions for approvals are set out. Subject to specific exemptions in the regulations, approvals are required for anything defined as an activity under section 1(b). Examples of activities include construction in a water body, drainage ditches and cut-offs. In some cases, it may be appropriate to allow a small quantity diversion for a short period of time under a term or condition of an approval. Examples of this are dewatering of a construction site or the washing of gravel.

  For the definition of an "activity" see: section 1(b).

Prohibition Against Commencing or Continuing an Activity Without an Approval

34(1) Subject to section 35 (Exemptions from Requirement for an Approval), no person shall knowingly commence or continue an activity unless that person holds the required approval for that activity under this Act.

(2) Subject to section 35 (Exemptions from Requirement for an Approval), no person shall commence or continue an activity unless that person holds the required approval for that activity under this Act.

- Subject to the exemptions under section 35 (Exemptions from Requirement for an Approval), an approval must be obtained where an activity, as defined, is being carried out.

  Failure to obtain an approval is an offence under section 144 (Offences), and may result in an enforcement order being issued or prosecution. Where the offence is done knowingly under section 34(1), there is a more serious penalty than under section 34(2).

Exemptions From Requirement for an Approval

35(1) Notwithstanding section 34 (Prohibition Against Commencing or Continuing an Activity Without an Approval), a person who commences or continues an activity

(a) that has been designated in the regulations as being exempt from the requirement for an approval, or

(b) in an area of the Province that has been designated by the regulations as an area that is exempt from the requirement for an approval for a specific activity in that area, and the person is commencing or continuing that specific activity in that designated area,

is not required to obtain an approval under this Act.

- To streamline the approval process, specific activities or specific activities within designated areas of Alberta may be exempted from the requirement to obtain an approval. Examples of these types of activities could include:

  - winter operation crossings that require a snow bridge in the Green Zone of Alberta

  - crossings requiring a culvert capacity less than 1,500 metres in diameter in the Green Zone of Alberta

Are there examples of other types of activities which could be exempted from the requirement to obtain an approval?

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Application for an Approval

36(1) An application for an approval must be made to the Director

(a) in the form and manner specified by the Director,

(b) contain or be accompanied by any information specified by the Director, and

(c) be accompanied by any fee required by the regulations.

(2) The Director may require an applicant to submit any additional information the Director considers necessary within any time period specified by the Director.

(3) An application for an approval may, at the discretion of the Director, be deemed to be an application for a licence.

(4) Where an applicant for an approval does not own in fee simple the land to which the approval will be appurtenant, (s)he shall submit the written consent of the land owner, as part of the application for the approval.

- Where a person makes an application for an approval (s)he must do so according to the form and manner set out by the Director. If required, the Director has the power to request additional information.

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Issuance of Approvals

37(1) On application for an approval by a person in accordance with this Act, the Director may issue or refuse to issue an approval to that person to commence or continue an activity.

(2) The Director may issue an approval subject to any terms and conditions the Director considers appropriate.

- After reviewing an application, the Director may issue or refuse to issue an approval. If the decision is to issue the approval, the Director may make it subject to appropriate terms and conditions.

(3) Notwithstanding any other provision in this Act, the Director may issue an approval that authorizes the temporary diversion of water associated with carrying out an activity.

(4) An approval authorizing the diversion of water associated with carrying out an activity does not provide any priority of rights with respect to that water.

(5) In making a decision under this section, the Director

(a) shall consider, with respect to the applicable area of the Province, the recommendations, matters and factors that must be considered in issuing an approval, as set out in any applicable approved water management plan;

(b) may consider any existing, potential or cumulative

(i) effects on the aquatic or riparian environment, including but not limited to fish habitat,

(ii) hydraulic, hydrological and hydrogeological effects, and

(iii) impacts on any licensees and other water users,

resulting from the activity; and

(c) may consider

(i) effects on public safety, and

(ii) any other matters applicable to the approval that, in the opinion of the Director, are relevant.

▼ This subsection sets out criteria that the Director shall/may consider in deciding whether to issue an approval.

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(6) No applicant for an approval shall acquire the right to commence or continue an activity until (s)he has complied with the provisions of this Act respecting the procedure to be followed in obtaining an approval.

(7) The Director shall issue an approval for a specified period of time.

No Approval on Minister's Order

38(1) Where the Minister is of the opinion that a proposed activity should not proceed because it is not in the public interest, having regard to the purposes of this Act, the Minister may order that no approval be issued in respect of the proposed activity.

(2) Where the Minister makes an order under subsection (1), (s)he shall provide

(a) notice in writing to the applicant for the approval, where an application for an approval has been submitted, and

(b) a copy of the order to the Director.

Requirement to Maintain Approval Onsite

39 An approval holder shall

(a) keep a copy of an approval that has ben issued to him or her at the place where the activity occurs or may occur, as specified in the regulations, and

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▼ This is a new requirement that ensures that the terms and conditions of an approval are readily known to those carrying out the activity.

(b) on request of a Director, inspector or investigator, produce the approval for inspection.

Certificate of Completion

40(1) On completion of the activity specified in the approval, the approval holder shall submit a certificate of completion, in the form and manner and containing the information specified by the Director, certifying that the approval holder has completed the activity.

(2) Notwithstanding subsection (1), the Director may require an approval holder to submit a certificate of completion with respect to the completion of part of an activity.

▼ A certificate of completion shall be prepared by an approval holder once the activity has been completed. The certificate must certify that the activity has been carried out in accordance with the approval. Failure to submit a certificate is an offence under section 144 (Offences), and may result in an enforcement order being issued or prosecution.

Extension of Expiry Date of Approval

41 The Director may, on his or her own initiative or on the request of an approval holder, extend the expiry date of an approval or a term or condition of an approval as the Director considers appropriate.

▼ In some cases it may be necessary to extend the expiry date of an approval. Examples would include long-term approvals where long-term maintenance and operation are required, such as with drainage ditches.

General Amendment of Approvals

42(1) The Director may amend an approval

(a) on application by the approval holder, with the consent of the Director;

(b) with the consent of the approval holder; and

▼ Amendments to approvals may be made under the circumstances set out in this provision.

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(c) on the Director's own initiative, without the consent of the approval holder

(i) in order to correct a clerical error in an approval,

(ii) if the term or condition relates to a monitoring, reporting or inspection requirement,

(iii) where the Director has received notice of a conveyance or other disposition of land to which an approval is appurtenant under section 46 (Appurtenancy of Approvals to Land), to reflect the conveyance or disposition,

(iv) where the purpose of the amendment is to address matters related to a temporary discontinuance of the activity by the approval holder,

(v) where the Director extends the expiry date of an approval under section 41 (Extension of Expiry Date of Approval),

(vi) if in the Director's opinion an adverse effect on the aquatic or riparian environment, any licensee or other water user occurs that was not reasonably foreseeable at the time the approval was issued, or

(vii) where there is a term or condition of the approval allowing the amendment.

(2) An application under subsection (1)(a) must be made in the form and manner specified by the Director.

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(3) Notwithstanding subsection (1), an approval holder does not require an amendment of his or her approval in order to make an adjustment, repair, replacement or have maintenance done during the course of normal operations of a works, as specified in the regulations.

(4) Notwithstanding this section, the addition of and modifications to plans or specifications relating to an approval, that in the opinion of the Director do not substantially change the terms and conditions of the approval, do not constitute an amendment for the purposes of this Act.

(5) Where an amendment is made under subsection (1)(c)(vi) that substantially affects the rights of the approval holder, the Minister may pay compensation to the approval holder for any losses incurred by the approval holder as a result of the amendment, in the manner and amount the Minister considers appropriate.

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Suspension and Cancellation of Approvals

43(1) The Director may suspend or cancel an approval

(a) on application by the approval holder, with the consent of the Director;

(b) with the consent of the approval holder;

(c) on the Director's own initiative without the consent of the approval holder where

(i) the approval has been issued in error,

▼ This provision sets out the circumstances under which an approval may be suspended or cancelled.

(ii) in the opinion of the Director, the activity has been abandoned,

(iii) there is an emergency and the Director is of the opinion that it is necessary for public safety,

(iv) there is a default in any payment of any rents, fees or money owing to Her Majesty in right of Alberta under this Act,

(v) there is non-performance or in the opinion of the Director, is a serious breach of any term or condition of the approval,

(vi) in the opinion of the Director, the approval holder has made a material misrepresentation in obtaining the approval,

(vii) the approval holder is convicted of an offence under this Act, other than an offence under section 39 (Requirement to Maintain Approval Onsite), 69 (Requirement to Maintain Temporary Diversion Licence Onsite), 94 (Use of Land Under the Administration of the Minister) or 144 (1)(m) (Failure to Provide Notice),

(viii) the Director is of the opinion that there is a significant adverse effect on the aquatic or riparian environment, a licensee or other water user that was not reasonably foreseeable at the time the approval was issued.

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(2) Where an approval has been cancelled or suspended, all rights of the approval holder cease, and in addition to the Director exercising any powers provided under Part 7 (Remedial Measures) and Part 9 (Enforcement), the Government may recover any fees owing by the approval holder.

(3) Where an approval is suspended or cancelled under subsection (1)(viii) that substantially affects the rights of the approval holder, the Minister may pay compensation to the approval holder, for any losses incurred by the approval holder as a result of the suspension or cancellation, in the manner and amount the Minister considers appropriate.

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Security

44(1) If required by the regulations, an applicant for an approval or an approval holder shall provide financial or other security and carry insurance in respect of the matter or thing to which the approval relates.

(2) Subsection (1) does not apply to the Government or a Government agency.

Information Requirements

45 An approval holder, or his or her administrator, receiver, receiver-manager or trustee, shall forthwith submit to the Director any information with respect to the approval or related matter, on the request of the Director, in accordance with the regulations, whether or not an approval has been suspended.

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- To ensure compliance with an approval, there may be a requirement to provide security. In the event that terms and conditions of an approval are not followed and the water resource is adversely impacted, the security can be used to remedy the problem.

Appurtenancy of Approvals to Land

46(1) Every approval issued shall specify the land to which the approval is appurtenant.

(2) An approval and all works constructed under the approval

(a) are appurtenant to the land specified in the approval,

(b) are inseparable from the land specified in the approval, and

(c) pass with the land on any demise, devise, alienation, conveyance or other disposition of the land, unless the Lieutenant Governor in Council orders otherwise.

- Approvals are appurtenant to the land specified in the approval. Therefore if the land is sold, the approval "passes" with the land to the new owner.

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DIVISION 2 - LICENCES

DISCUSSION DRAFT

No Licences for the Transfer of Water Outside Canada

47(1) Notwithstanding section 52 (Issuance of Licences), for the purpose of promoting the conservation and management of water, including the wise allocation and use of water, no licence shall be issued for the purpose of transferring water outside of Canada by any means, unless the licence is specifically authorized by a Special Act of the Legislature.

(2) Subsection (1) does not apply to processed, municipal or treated water.

NOTES

- Division 2 sets out the administrative procedures for licences. Subject to specific exemptions in the regulations, as set out in section 50 (Exemption from the Requirement to Obtain a Licence), licences will generally be required for diversions of water, as defined under section 1(n). Examples of diversions include withdrawing water from a water body for irrigating crops and withdrawing groundwater for municipal use. Licences will not be required for diversions pursuant to section 25 (Right to Divert Water Without a Licence) or section 26 (Right to Divert by Riparian Owner or Occupant).

  For the definition of a "diversion" see: section 1(n).

- This provision gives statutory status to the Government's commitment that it will not be party to any undertaking to divert water beyond Canadian borders. Any change to this policy would require Government approval through legislative changes.

  For more information refer to the Guide: Surface Water and Groundwater Rights - No Export of Water.

No Transfer Between Basins

48 No licence shall be issued under section 52 (Issuance of Licences) for the purpose of transferring water between major river basins in Alberta unless the licence is specifically authorized by a Special Act of the Legislature.

- This provision supports the Government's intent of not allowing new interbasin transfers between the major river basins. Any change to this policy would require Government approval through legislative changes.

  As well, transfers between major river basins will not be allowed under the transfer system (Part 5 - Transfer of an Allocation Under a Licence).

  For more information refer to the Guide: Surface Water and Groundwater Rights - Interbasin Transfer.

  For the definition of "major river basin" see: section 1(ll).

Prohibition Where a Person is Unlicensed

49(1) Subject to section 50 (Exemption from the Requirement to Obtain a Licence), no person shall knowingly

(a) commence or continue a diversion of water for any purpose, or

(b) operate a works for the diversion of water,

except under the authority of this Act or a licence issued under this Act.

(2) Subject to section 50 (Exemption from the Requirement to Obtain a Licence), no person shall

(a) commence or continue a diversion of water for any purpose, or

- Subject to specific exemptions under section 50 (Exemption from the Requirement to Obtain a Licence), a licence must be obtained where a diversion of water is being carried out. Exceptions to this are set out under section 25 (Right to Divert Water Without a Licence) and section 26 (Right to Divert by Riparian Owner or Occupant). As well, under section 37 (Issuance of Approvals), an approval may allow for the diversion of water where the diversion is related to the activity.

  Failure to obtain a licence is an offence under section 144 (Offences), and may result in an enforcement order being issued or prosecution. Where the offence is done knowingly under section 49(1), there is a more serious penalty than under section 49(2).

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(b) operate any works for the diversion of water,

except under the authority of this Act or a licence issued under this Act.

Exemption from the Requirement to Obtain a Licence

50 Notwithstanding section 49 (Prohibition Where a Person is Unlicensed), a person who commences or continues the diversion of water

(a) that has been designated in the regulations as exempt from the requirement for a licence, or

(b) in an area of the Province that has been designated in the regulations as an area where no licence will be required for a specific diversion of water for a specific purpose, and the person is commencing or continuing that specific diversion of water for that specific purpose in that designated area,

is not required to obtain a licence for the diversion of that water under this Act.

▼ In some situations, specific diversions of water or specific diversions of water within designated areas of Alberta may be exempted from the requirement to obtain a licence. An example could be small agricultural dams, such as stock watering dams.

Are there examples of other types of diversions which could be exempted from the requirement to obtain a licence?

Application for a Licence

51(1) An application for a licence must be made to the Director and must

(a) be in the form and manner specified by the Director,

▼ Where a person makes an application for a licence (s)he must do so as specified by the Director. If required, the Director may request additional information.

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(b) contain or be accompanied by any information specified by the Director, and

(c) be accompanied by any fee required by the regulations.

(2) The Director may require an applicant to submit any additional information the Director considers necessary within any time period specified by the Director.

(3) An application for a licence may, at the discretion of the Director, be deemed to be an application for an approval.

(4) Where an applicant for a licence does not own in fee simple the land to which the licence will be appurtenant, (s)he shall submit the written consent of the land owner, as part of the application for the licence.

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Issuance of Licences

52(1) On application for a licence by a person in accordance with this Act, the Director may issue or refuse to issue

(a) a preliminary certificate in accordance with section 71 (Issuance of Preliminary Certificates) to that person; or

(b) a licence to that person for

(i) the diversion of water, or

(ii) the operation of a works for the diversion of water;

▼ Upon receiving an application for a licence, the Director must decide whether a licence should be issued. In making this decision, subsection (5) sets out a number of things the Director shall/may consider. If the Director decides that a licence may be issued the Director may require, on his own initiative or at the request of the applicant, that a preliminary certificate be issued prior to the licence. This will be done in cases where there are conditions precedent that must be fulfilled before the licence can be issued, for example, a right of way.

for any purpose as specified in the regulations.

The provisions relating to preliminary certificates are set out under Division 3 (Preliminary Certificates) of this Part. If a preliminary certificate is not required, the Director will proceed to issue a licence.

(2) On application by Her Majesty in right of Alberta in accordance with this Act, the Director may issue or refuse to issue a licence to Her Majesty in right of Alberta for

(a) the diversion of water,

(b) the operation of a works for the diversion of water, or

(c) providing or maintaining a flow of water,

for the purpose of implementing an instream need or water conservation and management objective under section 20(1)(a), (b) or (c) (Water Conservation and Management Objectives and Guidelines).

▼ This subsection allows the Crown in right of Alberta to obtain a licence for the purpose of meeting an instream need, or a water conservation and management objective provided for under section 20(1)(a), (b) or (c) (Water Conservation and Management Objectives and Guidelines). This licence will have priority over all other licences issued under the Discussion Draft.

[see: sections 19, 20, 28(5)]

(3) Notwithstanding subsection (1), an application under subsection (2) may only be made by Her Majesty in right of Alberta.

(4) The Director may issue a licence referred to in subsection (1) or (2) subject to any terms and conditions the Director considers appropriate.

(5) In making a decision under this section, the Director

(a) shall consider, with respect to the applicable area of the Province, the recommendations, matters and factors that

▼ This subsection sets out criteria that the Director shall/may consider in deciding whether to issue a licence.

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must be considered in issuing a licence, as set out in any applicable approved water management plan;

(b) may consider any existing, potential or cumulative

(i) effects on the aquatic or riparian environment, including but not limited to fish habitat,

(ii) hydraulic, hydrological and hydrogeological effects, and

(iii) impacts on any other licensees and water users,

resulting from the diversion, operation of a works or provision or maintenance of a flow of water; and

(c) may consider

(i) effects on public safety,

(ii) with respect to irrigation, the suitability of the land for irrigated agriculture,

(iii) any other matters applicable to the licence that in the opinion of the Director are relevant, including any instream need or water conservation and management objective, where available.

(6) No applicant for a licence shall acquire the right to divert water until (s)he has complied with the provisions of this Act respecting the procedure to be followed in obtaining a licence.

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(7) The Director shall issue a licence for a specified period of time.

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(8) A licensee of water for irrigation purposes, or a person who, under a licence, has acquired water from a licensee of water for irrigation purposes, is entitled to divert the water for household and related purposes, whether or not that licensee or person owns or occupies land that adjoins a river, stream, lake, natural watercourse or other natural water body.

(9) Where a licensee of water for irrigation purposes or a person acquiring water from such a licensee is entitled to divert water for household and related purposes under section 25 (Right to Divert Water Without a Licence), that licensee or person is entitled to the water specified under subsection (8), in addition to the entitlement under section 25.

- Currently the majority of licences issued under the *Water Resources Act (WRA)* are issued without a term (expiry date). Under the Discussion Draft, it is proposed that all new licences be issued for a term. Under this proposal, when term licences come up for renewal, the onus would be on the Crown to show why a licence should not be renewed.

  For provisions relating to renewal of licences see: section 63 (Application for Renewal of a Licence).

Do you think all new licences should be issued for a specified term (with an expiry date)?

If you think there should be terms, how do you think the length of the term should be determined?

For more information refer to the Guide: Approvals and Licences - Term.

Using Works of Another

53(1) Where a person has applied for a diversion of water through the use of another person's works in an application for a licence, the Director may issue the licence for the diversion, whether the works are constructed, under construction or to be constructed, where

(a) the works of the other person are licensed;

(b) the granting of that licence will not interfere with the licensed diversion made or to be made by the owner of the works, unless the owner of the works has agreed otherwise in a term of the agreement referred to in clause (c);

(c) the applicant for the licence and the owner of the works have made an agreement with respect to

(i) the use and maintenance of the works, and where necessary, the alteration and enlargement of the works,

(ii) the method of compensating the owner for the use and maintenance of the works, and

(iii) sharing the cost of altering, enlarging or jointly constructing the works, where applicable;

and

(d) the agreement has been submitted to the Director.

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(2) In granting the licence under subsection (1), the Director may authorize the applicant for the licence or the owner of the works to alter or enlarge any of the works referred to in subsection (1) that in the Director's opinion is requisite for the purpose.

(3) Notwithstanding subsection (2), where no agreement has been submitted to the Director, the Minister may by order grant the licence under subsection (1), and prescribe the manner in which any alteration or enlargement of the works is to be done where necessary, and the apportionment of the costs where, in the opinion of the Minister,

(a) there has been an unreasonable delay in submitting the agreement, and

(b) it is in the public interest to do so.

(4) Unless otherwise provided for in the agreement, an applicant who is authorized to alter or enlarge a works previously constructed is responsible for any loss or damage that is sustained by the owner of the works as a result of the alteration or enlargement, and the Minister shall determine the amount to be paid for the loss or damage and his or her determination is final.

(5) Orders made under this section require the approval of the Lieutenant Governor in Council.

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Moratoria

54(1) Where the Director is of the opinion that no further allocation of water should be made in a water management area, other geographical area or from a water body, the Director may make a decision that no application for a licence shall be accepted by the Director.

(2) In making a decision that no further allocation of water should be made under subsection (1), the Director

(a) shall consider, with respect to the applicable area of the Province, the recommendations, matters and factors that must be considered in issuing a licence, as set out in any applicable approved water management plan;

(b) may consider any existing, potential or cumulative

(i) effects on the aquatic or riparian environment, including but not limited to fish habitat,

(ii) hydraulic, hydrological and hydrogeological effects, and

(iii) impacts on any licensees and other water users,

resulting from the diversion, operation of a works or provision or maintenance of a flow of water; and

(c) may consider any other matters that in the opinion of the Director are relevant, including any instream need or

- In situations where the Director is of the opinion that no further allocations of water should be made, a moratorium may be established. Once in effect the Director is required to provide notice that no further applications for licences will be accepted.

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water conservation and management objective, where available.

(3) Where notice of a decision that no further allocation of water should be made has been given under section 113(4) (Notice to Applicant), the Director shall refuse to accept an application for a licence.

(4) The Director shall consider and make a decision with respect to an application for a licence received prior to the date the Director provides notice under section 113(4) (Notice to Applicant).

(5) Notwithstanding subsection (3), the Director may accept an application for a licence for a temporary diversion of water.

(6) Where the Director has made a determination under subsection (1) that no further allocation of water should be made, and is of the opinion that water may now be allocated, (s)he shall provide notice in accordance with the regulations that applications for licences will be accepted, and shall consider such applications in accordance with section 52 (Issuance of Licences).

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No Licence on Minister's Order

55(1) Where the Minister is of the opinion that a proposed

(a) diversion of water, or

(b) operation of a works for the diversion of water,

should not proceed because it is not in the public interest having regard to the purposes of this Act, the Minister may order that no licence be issued in respect of the proposed diversion or operation.

(2) Where the Minister makes an order under subsection (1), (s)he shall provide

(a) notice in writing to the applicant for the licence, where an application for a licence has been submitted, and

(b) a copy of the order to the Director.

General Amendment of Licences

56(1) The Director may, where the amendment does not result in an increase in the rate or quantity of or a change in the timing of the diversion of water, in accordance with the regulations, amend a licence

(a) on application by the licensee, or at the request of the Director with the consent of the licensee;

(b) to give effect to a transfer of an allocation of water under a licence;

(c) on the Director's own initiative, without the consent of the licensee

(i) in order to correct a clerical error in a licence,

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- Amendments to existing licences may be made under the circumstances set out in this provision.

(ii) if the term or condition relates to a monitoring, reporting or inspection requirement,

(iii) where the Director has received notice of a conveyance of other disposition of land or disposition of an undertaking to which a licence is appurtenant,

(iv) if in the Director's opinion an adverse effect on the aquatic or riparian environment occurs that was not reasonably foreseeable at the time the licence was issued,

(v) to amalgamate licences under section 59 (Amalgamation of Licences),

(vi) in order to limit the quantity of water to that which a works is capable of carrying,

(vii) where there is a term or condition of the licence allowing the amendment.

(2) An application for an amendment to a licence under subsection (1) and section 57 (Allowable Amendments for Conservation) must be made to the Director and must

(a) be in the form and manner specified by the Director,

(b) contain or be accompanied by any information specified by the Director, and

(c) be accompanied by any fee required by the regulations.

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(3) Notwithstanding subsection (1), a licensee does not require an amendment of his or her licence in order to make an adjustment, repair, replacement or have maintenance done during the course of normal operations of a works, as specified in the regulations, where the change does not result in an increase in the rate or quantity of or a change in timing of the diversion of water.

(4) Where an amendment is made under subsection (1)(c)(iv) that substantially affects the rights of the licensee, the Minister may pay compensation to the licensee for any losses incurred by the licensee as a result of the amendment, in the manner and amount the Minister considers appropriate.

(5) Notwithstanding this section, the addition of or modifications to plans and specifications relating to a licence that, in the opinion of the Director, do not substantially change the terms and conditions of the licence, do not constitute an amendment for the purposes of this Act.

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Allowable Amendments for the Purposes of Effective Water Conservation and Management

57 Notwithstanding section 56(1), (General Amendment of Licences) on application by a licensee, the Director may amend a licence, subject to any terms and conditions the Director considers appropriate, to

(a) increase or decrease the rate of diversion of water,

(b) add a rate of diversion of water where none is specified in the licence,

(c) add terms and conditions to a licence, and

(d) change the timing of the diversion of water specified in the licence,

where the Director is of the opinion that

(i) there is or will be no adverse impact on the rights of any other licensee or water user,

(ii) the total allocation specified in the licence will not be increased, and

(iii) the proposed change would result in the improved conservation or management of a water body.

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Suspension and Cancellation of Licences

58(1) The Director may suspend or cancel a licence

(a) on the request of the licensee;

(b) where a licence has been issued in error;

(c) where there is an emergency and the Director is of the opinion that it is necessary for safety purposes;

(d) where there is a default in any payment of any rents, fees or money owing to Her Majesty in right of Alberta under this Act;

▼ This provision sets out the circumstances under which a licence may be cancelled or suspended.

(e) where there is non-performance or in the opinion of the Director, there is a serious breach of any term or condition of the licence;

(f) where, in the opinion of the Director, there

(i) has been no diversion of any of the water allocated in the licence, or a failure or ceasing to exercise the rights granted under the licence over a period of 3 years, and

(ii) is no reasonable prospect that the licensee will resume diversion of all or part of the water specified in the licence, or resume the exercise of the rights granted under the licence,

as specified in the regulations;

(g) where, in the opinion of the Director, the licensee has made a material misrepresentation in obtaining the licence;

(h) where the licensee has been convicted of an offence under this Act, other than an offence under section 39 (Requirement to Maintain Approval Onsite), 69 (Requirement to Maintain Temporary Diversion Licence Onsite), 94 (Use of Land Under the Administration of the Minister), 144(1)(m) (Failure to Provide Notice);

(i) where, in the opinion of the Director, there is a significant adverse effect on the aquatic or riparian environment that was not reasonably foreseeable at the time the licence was issued.

▼ The intent of clause (f) is to prevent non-use of water over the long-term in situations where there is no reasonable prospect of resuming the use of that water. It would not apply where a licensee fails to use water due to a series of high water years.

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(2) Where a licence has been cancelled or suspended, all rights of the licensee cease, and in addition to the Director exercising any powers provided under Part 7 (Remedial Measures) and Part 9 (Enforcement), the Government may recover any fees owing by the licensee.

(3) Where the Director suspends or cancels a licence under subsection (1)(i), and the suspension or cancellation affects the rights of the licensee, the Minister may pay compensation to the licensee, for any losses incurred by the licensee as a result of the cancellation or suspension, in the manner and amount the Minister considers appropriate.

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Amalgamation of Licences

59(1) The Director may, where (s)he is of the opinion that it is appropriate to do so, amalgamate two or more licences where

(a) all of the licences to be amalgamated are held by the same licensee,

(b) the licensee has requested the amalgamation,

(c) the Director is of the opinion that the amalgamation will improve the administration of the licences under this Act, and

(d) there is no impact on other licensees or water users.

(2) The Director shall give the licence resulting from the

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amalgamation, the priority of the most junior licence that was amalgamated.

(3) The licence resulting from the amalgamation may contain any terms and conditions

(a) contained in any of the licences that have been amalgamated, or

(b) that, in the opinion of the Director, are necessary to give effect to the amalgamation.

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Security

60(1) If required by the regulations, an applicant for a licence or a licensee shall provide financial or other security and carry insurance in respect of the matter or thing to which the licence relates.

(2) Subsection (1) does not apply to the Government or a Government agency.

Information Requirements

61 A licensee, or his or her administrator, receiver, receiver-manager or trustee, shall forthwith submit to the Director any information with respect to the licence or related matter, on the request of the Director, in accordance with the regulations, whether or not a licence has been suspended.

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- In order to ensure compliance with a licence there may be a requirement to provide security. If the terms and conditions of a licence are not followed and the water resource is adversely impacted, the security can be used to remedy the problem.

Appurtenancy of Licences to Land or an Undertaking

62(1) Subject to Part 5 (Transfer of an Allocation Under a Licence), a licence and all works operated under the licence are

(a) appurtenant to the land or undertaking specified in the licence, and

(b) pass with the land or undertaking on any demise, devise, alienation, conveyance or other disposition of the land or disposition of the undertaking.

(2) Every licence issued shall specify the land or the undertaking to which the licence is appurtenant.

▼ Licences are appurtenant to the land or undertaking which is specified in the licence. Therefore if the land or undertaking is sold, the licence "passes" with the land or undertaking to the new owner.

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RENEWAL OF LICENCES

Application for a Renewal of a Licence

63(1) A licensee may apply for a renewal of his or her licence in the form and manner specified by the Director, at any time prior to the application renewal date specified in the licence.

(2) Where a licensee fails to apply for a renewal of his or her licence under subsection (1), the Director shall give notice to the licensee that the licence shall expire on the expiry date of the licence.

(3) Where the Director does not receive an application for renewal after providing notice under subsection (2), the licence shall expire on the expiry date of the licence.

▼ As stated under section 52(7) (Issuance of Licences), it is proposed that new licences would be issued for a term (with an expiry date). If licences are issued for a term, it is proposed that the onus would be on the Government to show why a licence should not be renewed. Section 64(2) (Decision to Renew a Licence) sets out the circumstances under which a licence may not be renewed. To aid in determining whether a licence should be renewed the Director may conduct a public review.

(4) Notwithstanding that a licence has expired, the Minister may reinstate a licence as if it had never expired where notice to the licensee that his or her licence shall expire was not provided in accordance with this Act.

Decision to Renew a Licence

64(1) Where an application for renewal has been submitted to the Director, the Director shall

(a) renew the licence, or

(b) refuse to renew the licence in accordance with subsection (2),

by the expiry date of the licence.

(2) The Director may make a decision not to renew a licence only where

(a) the Director is of the opinion that it is not in the public interest to renew the licence;

(b) the Minister or the Lieutenant Governor in Council has specified in an approved water management plan that the licence shall not be renewed;

(c) the instream need or water conservation and management objective for a water body from which the diversion of water will be made is not being met;

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(d) the renewal, in the opinion of the Director, would cause damage to the aquatic or riparian environment, including but not limited to fish habitat;

(e) in the opinion of the Director, there

(i) has been no diversion of any of the water allocated in the licence, or a failure or ceasing to exercise the rights granted under the licence over a period of 3 years, and

(ii) is no reasonable prospect that the licensee will resume diversion of all or part of the water specified in the licence or will resume the exercise of the rights granted under the licence,

as specified in the regulations;

(f) there is a term or condition of the licence that the licence will not be renewed.

(3) Where the Director makes a decision not to renew a licence, the Director shall provide written reasons for his or her decision to the applicant for the renewal in accordance with the regulations.

(4) The Director may extend the expiry date of a licence for the purposes of this section.

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Public Review of Licence Renewal

65(1) The Director may conduct a public review with respect to the renewal of a licence.

(2) A public review shall be in the form and manner determined by the Director, and shall be completed prior to the expiry date of the licence, to enable the Director to make a decision on the renewal in accordance with section 64 (Decision to Renew a Licence), subject to any extensions of the licence made under section 64(4).

LICENCES FOR THE TEMPORARY DIVERSION OF WATER

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Application for A Licence for Temporary Diversion

66(1) An application for a licence for the temporary diversion of water must be made to the Director and must

(a) be in the form and manner specified by the Director,

(b) contain or be accompanied by any information specified by the Director, and

(c) be accompanied by any fee required by the regulations.

- Temporary diversion licences apply to situations where water is required for a short period of time. Examples include testing of pipelines and soil compaction during road building. These types of licences are not subject to the normal licensing application process and therefore, are not given any priority. No notice or appeal provisions apply to these types of licences.

(2) The Director may require an applicant to submit any additional information the Director considers necessary within any time period specified by the Director.

Issuance of Licences for Temporary Diversion of Water

67(1) The Director may issue a licence for the temporary diversion of water to any person subject to any terms and conditions the Director considers appropriate.

- Under this provision the Director may issue a licence for the temporary diversion for a period of up to one year.

(2) The Director shall issue a licence for the temporary diversion of water for a specified period of time, not to exceed one year.

(3) The Director may extend the expiry date of a licence for the temporary diversion of water, provided that the total period for which the licence has been issued does not exceed one year.

(4) Notwithstanding subsection (2) and (3), the Director may reissue a licence for a temporary diversion of water, on application.

(5) Sections 24 (Protection of Existing Water Rights), 28 (General Priority of Rights), 29 (Limit on Licensees Rights, Capacity of Works), 51 (Application for a Licence), 52 (Issuance of Licences), 53 (Using Works of Another), 56 (General Amendment of Licences), 57 (Allowable Amendments for Conservation), 58 (Suspension and Cancellation of Licences), 59 (Amalgamation of Licences) and Part 5 (Transfer of an Allocation) of the Act are not applicable to a licence for the temporary diversion of water.

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Amendment, Cancellation and Suspension of Temporary Diversion Licence

68 The Director may

(a) on the Director's own initiative, amend a licence for the temporary diversion of water in order to correct a clerical error in the licence,

(b) on request of the licensee, amend a licence for the temporary diversion of water,

(c) suspend or cancel a licence for the temporary diversion of water at any time.

▼ Amendments, cancellations or suspensions of temporary diversion licences may be made under the circumstances set out in this provision.

Requirement to Maintain Temporary Diversion Licence Onsite

69 A holder of a licence for the temporary diversion of water shall

(a) keep a copy of his or her licence at the place where the diversion or transportation of water occurs or may occur, and

(b) on the request of a Director, inspector or investigator, produce the licence for inspection.

▼ Similar to approvals, temporary diversion licences are required to be maintained onsite. This ensures that people withdrawing the water know the applicable terms and conditions.

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Crown Reservation

70(1) Notwithstanding anything in this Act, the Lieutenant Governor in Council may order the reservation of any water that is not currently allocated under a licence or specified in a preliminary certificate in order

(a) to determine how water, in the opinion of the Lieutenant Governor in Council, may be used, or

(b) to reserve water for any purpose.

(2) Where an order for the reservation of water has been made under subsection (1),

(a) the Lieutenant Governor in Council may, subject to any terms and conditions considered appropriate by the Lieutenant Governor in Council, prescribe the priority of any allocation to be made of the reserved water, and

(i) the purposes for which,

(ii) the manner in which,

(iii) any person to whom, and

(iv) the time period within which, an allocation of the reserved water may be made by the Director;

(b) the Director may

▼ The authority for the Crown to reserve unallocated water is continued under this provision. Unallocated water may be reserved for a variety of purposes including instream protection.

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(i) retain the water reserved in the water body in accordance with the terms and conditions of the reservation,

(ii) issue a licence for the temporary diversion of the reserved water, unless prohibited by the Lieutenant Governor in Council,

(iii) issue a licence for the diversion of the reserved water if allowed by and in accordance with the prescriptions of the Lieutenant Governor in Council under clause (a), or

(iv) refuse to accept an application for a licence for the reserved water, unless the refusal is contrary to any prescriptions of the Lieutenant Governor in Council under clause (a).

(3) Where the Director issues a licence under subsection (2)(b), including a licence for the temporary diversion of water, (s)he shall, subject to any prescriptions of the Lieutenant Governor in Council, do so in accordance with this Act.

(4) The Lieutenant Governor in Council may amend a term or condition of an order to reserve water made under subsection (1).

(5) The Lieutenant Governor in Council may by order rescind all or part of a reservation made under subsection (1).

(6) Where an order to rescind a reservation of water is made, any of the reserved water that has not been allocated under a licence shall be dealt with in accordance with the provisions of this Act, unless otherwise prescribed by the Lieutenant Governor in Council.

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DIVISION 3 - PRELIMINARY CERTIFICATES

Issuance of Preliminary Certificates

71(1) Where a person has applied for a licence under section 51 (Application for a Licence), the Director may, at his or her discretion, issue a preliminary certificate to that person.

(2) In considering whether to issue a preliminary certificate, the Director

(a) shall consider, with respect to the applicable area of the Province, the recommendations, matters and factors that must be considered in issuing a licence, as set out in any applicable approved water management plan;

(b) may consider any existing, potential or cumulative

(i) effects on the aquatic or riparian environment, including but not limited to fish habitat,

(ii) hydraulic, hydrological and hydrogeological effects, and

(iii) impacts on any licensees or other water users,

- Division 3 sets out the administrative procedures for preliminary certificates. When an application for a licence has been made under Section 51 (Application for a Licence), the Director may decide to issue a preliminary certificate prior to the issuance of the licence. A preliminary certificate will contain a commitment to make a specific allocation and outline the conditions to be met before the licence is issued. Provisions relating to licences are set out under Division 2 (Licences) of this Part.

- This provides the Director with the discretion to decide whether to issue a preliminary certificate.

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resulting from the diversion, operation of a works or provision or maintenance of a flow of water; and

(c) may consider

(i) effects on public safety,

(ii) with respect to irrigation, the suitability of the land for irrigated agriculture,

(iii) any other matters applicable to the licence that in the opinion of the Director are relevant, including any instream need or water conservation and management objective, where available.

(3) In a preliminary certificate the Director

(a) shall specify

(i) the conditions precedent that must be complied with before a licence will be issued, including but not limited to a requirement for securing any necessary rights of way,

(ii) an allocation of water and related terms and conditions that will be included in a licence when the preliminary certificate holder fulfils all conditions precedent specified in the preliminary certificate,

(iii) the priority number assigned to the application for the licence, and

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(iv) the date for submission of a certificate of completion;

(b) may specify

(i) any other terms and conditions that the Director considers appropriate,

(ii) that any further terms and conditions may be added to a licence that is issued subsequent to the preliminary certificate.

(4) The Director shall issue a preliminary certificate for a specified period of time.

No Preliminary Certificate on Minister's Order

72(1) Where the Minister is of the opinion that a proposed

(a) diversion of water, or

(b) operation of a works for the diversion of water,

should not proceed because it is not in the public interest having regard to the purposes of this Act, the Minister may order that no preliminary certificate be issued in respect of the proposed diversion or operation.

(2) Where the Minister makes an order under subsection (1), (s)he shall provide

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(a) notice in writing to the applicant for the licence, where an application has been submitted, and

(b) a copy of the order to the Director.

Certificate of Completion

73(1) Where the holder of a preliminary certificate submits a certificate of completion in accordance with the terms and conditions of the preliminary certificate and in the form and manner specified by the Director, certifying that the holder has fulfilled the conditions precedent specified in the preliminary certificate, the Director shall

(a) issue a licence, or

(b) where the Director is of the opinion that the conditions precedent specified in the preliminary certificate have not been fulfilled, refuse to issue a licence.

(2) Subject to subsection (3), where the Director issues a licence under subsection (1), s(he) shall include as a term or condition of the licence

(a) the allocation of water and related terms and conditions that have been specified in the preliminary certificate, and

(b) the priority number,

as specified in the preliminary certificate.

▼ This provision allows for the issuance of a licence once the preliminary certificate holder has submitted a certificate of completion. The certificate must signify that all the conditions precedent have been fulfilled. What must be included in the licence from the preliminary certificate is set out under this provision. Once a licence is issued, the preliminary certificate becomes null and void.

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(3) Notwithstanding subsection (2),

(a) where a certificate of completion indicates that a lesser quantity of water will be diverted than specified in the application for the licence, or

(b) the Director is of the opinion that the capacity of the works constructed is insufficient to divert the quantity or rate of water specified in the application for an approval or a licence,

the Director may issue the licence for a lesser quantity or a change in the rate or time of diversion.

(4) Where a licence has been issued subsequent to a preliminary certificate, the licensee has only those rights provided in the licence, and has no further rights with respect to the preliminary certificate.

(5) Where the holder of a preliminary certificate fails to submit a certificate of completion by the required date, as specified in the preliminary certificate, the preliminary certificate and the application for the licence become null and void on the expiry date of the preliminary certificate.

Extension of Expiry Date of Preliminary Certificate

74(1) The Director may extend the expiry date of a preliminary certificate for one or more periods provided that the total extended time is not longer than two years.

(2) Notwithstanding subsection (1), the Lieutenant Governor in Council may extend the expiry date of a preliminary certificate for

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one or more periods of any length where the Lieutenant Governor in Council considers it is in the public interest to do so.

Amendment of Preliminary Certificates

75(1) The Director may, where the amendment does not result in an increase in the rate or quantity of or a change in the timing of the diversion of water, in accordance with the regulations, amend a preliminary certificate

(a) on application by the preliminary certificate holder with the consent of the Director;

(b) with the consent of the preliminary certificate holder;

(c) on the Director's own initiative, without the consent of the preliminary certificate holder

(i) in order to correct a clerical error in a preliminary certificate,

(ii) if the term or condition relates to a monitoring, reporting or inspection requirement,

(iii) to give effect to the conveyance or other disposition of land or disposition of an undertaking to which a preliminary certificate is appurtenant under section 78 (Appurtenancy of Preliminary Certificates),

- Similar to approvals and licences, amendments may be made to preliminary certificates.

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(iv) if in the Director's opinion an adverse effect on the aquatic or riparian environment occurs or may occur, that was not reasonably foreseeable at the time the preliminary certificate was issued, or

(v) where there is a term or condition of the preliminary certificate allowing the amendment.

(2) An application under subsection (1)(a) and section 76 (Allowable Amendments for Conservation) must be made in the form and manner specified by the Director.

(3) Where an amendment is made under subsection (1)(c)(iv) that substantially affects the rights of the preliminary certificate holder, the Minister may pay compensation to the preliminary certificate holder for any losses incurred by the preliminary certificate holder as a result of the amendment, in the manner and amount the Minister considers appropriate.

(4) Notwithstanding this section, the addition of or modifications to plans and specifications relating to a preliminary certificate that, in the opinion of the Director, do not substantially change the terms and conditions of the preliminary certificate, do not constitute an amendment for the purposes of this Act.

Allowable Amendments for the Purposes of Effective Water Conservation and Management

76 Notwithstanding section 75(1), (Amendment of Preliminary Certificates) on application by a preliminary certificate holder, the

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Director may amend a preliminary certificate subject to any terms and conditions the Director considers appropriate, to

(a) increase or decrease the rate of diversion of water.

(b) add a rate of diversion where none is specified in the preliminary certificate,

(c) add terms and conditions to a preliminary certificate, and

(d) change the timing of diversion specified in the preliminary certificate,

where the Director is of the opinion that

(i) there is or will be no adverse impact on the rights of any other licensee or water user,

(ii) the total allocation specified in the preliminary certificate will not be increased, and

(iii) the proposed change would result in the improved conservation or management of a water body.

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Cancellation of Preliminary Certificates

77(1) The Director may cancel a preliminary certificate

(a) on the request of the preliminary certificate holder,

(b) where a preliminary certificate has been issued in error,

▼ This provision sets out the circumstances under which a preliminary certificate may be suspended or cancelled.

(c) where there is a default in any payment of any rents, fees or money owing to Her Majesty in right of Alberta under this Act,

(d) where, in the opinion of the Director, there is a serious breach of any term or condition of the preliminary certificate,

(e) where a preliminary certificate holder has ceased to exercise the authority granted under an approval that is applicable to the preliminary certificate,

(f) where the preliminary certificate holder has made a material misrepresentation in obtaining the preliminary certificate,

(g) where the preliminary certificate holder has been convicted of an offence under this Act, other than an offence under section 39 (Requirement to Maintain Approval Onsite), 69 (Requirement to Maintain Temporary Diversion Licence Onsite), 94 (Use of Land Under the Administration of the Minister) and 144(1)(m) (Failure to Provide Notice),

(h) where the Director is of the opinion that there may be a significant adverse effect on the aquatic or riparian environment that was not reasonably foreseeable at the time the preliminary certificate was issued.

(2) Where a preliminary certificate has been cancelled, all rights of the preliminary certificate holder cease, and in addition to the Director exercising any powers provided under Part 7 (Remedial

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Measures) and Part 9 (Enforcement), the Government may recover any fees owing by the preliminary certificate holder.

(3) Where the cancellation of a preliminary certificate under subsection (1)(h) substantially affects the rights of the preliminary certificate holder, the Minister may pay compensation to the preliminary certificate holder for any losses incurred by the preliminary certificate holder as a result of the cancellation, in the manner and amount the Minister considers appropriate.

Appurtenancy of Preliminary Certificates to Land or an Undertaking

78(1) A preliminary certificate

(a) is appurtenant to the land or undertaking specified in the preliminary certificate,

(b) is inseparable from the land or undertaking specified in the preliminary certificate, and

(c) passes with the land or undertaking on any demise, devise, alienation, conveyance or other disposition of the land or disposition of the undertaking.

(2) Every preliminary certificate issued shall specify the land or the undertaking to which the preliminary certificate is appurtenant.

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▼ As with approvals and licences, preliminary certificates are appurtenant to the land or undertaking specified in the preliminary certificate. This means that the preliminary certificate "attaches" to the land or undertaking and will "pass" with the land or undertaking if the land or undertaking is sold.

DIVISION 4 - NOTICE OF DISPOSITION OF LAND OR AN UNDERTAKING AND DECLARATION OF WATER BODIES AS NATURAL

- This Division provides for the notice of a conveyance or other disposition of land or disposition of an undertaking and the declaration of water bodies as natural water bodies.

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Notice of Conveyance or Disposition

79(1) Where an approval or preliminary certificate holder or a licensee has conveyed or disposed of an interest or estate in land or disposed of an undertaking that is referred to in the approval, preliminary certificate or licence[1] to another person, the approval or preliminary certificate holder or licensee who has conveyed or disposed of the interest or estate land or has disposed of the undertaking shall notify the Director in writing of that conveyance or disposition in the form and manner specified by the Director.

- This provision ensures that all subsequent licensees and affected landowners are aware of the obligations and effects of any approval, licence or preliminary certificate.

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(2) Where an approval or preliminary certificate holder or licensee who has conveyed or disposed of an interest or estate in land or has disposed of an undertaking fails to provide notice to the Director in accordance with subsection (1), the approval or preliminary certificate holder, licensee and the purchaser of the approval, preliminary certificate or licence

[1] Note that the sequence of approvals, preliminary certificates and licences in the text generally corresponds to the sequence in which the documents would be issued, rather than the sequence in Part 4 (Approvals, Licences and Preliminary Certificates).

(a) are jointly and severally liable for carrying out the duties and responsibilities specified in the approval, preliminary certificate or licence, and

(b) are subject to this Act.

(3) In addition to the ability to issue a water management order to a person who has purchased an approval, preliminary certificate or licence under section 99 (Issuance of Water Management Orders), where the Director has not received a notification under subsection (1), the Director may issue a water management order in accordance with section 99 to the approval or preliminary certificate holder or the licensee, who has conveyed or disposed of the interest or estate in land or disposed of the undertaking.

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Declaration as Naturally Occurring

80(1) The Director may in accordance with the regulations declare that a water body modification or relocation or drainage ditch is a naturally occurring water body for the purposes of this Act.

(2) This section applies to any water body modification or relocation, or drainage ditch that has been created, including but not limited to those created as a result of authority to divert or use water granted through

(a) an approval or licence issued under this Act, or

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- Where a water body modification or relocation, or drainage ditch has become a naturally occurring water body, it may be declared as such by the Director. Upon declaration, the original approval ceases to be in effect and the ongoing obligations under the approval cease to exist.

(b) any authority, permit, interim licence or final licence issued under any Act prior to the date this Act comes into effect.

(3) Where a declaration has been made under subsection (1),

(a) the approval, licence or other authorization, that authorized the activity or diversion of water that created the water body modification or relocation or drainage ditch, expires on the date the declaration comes into effect,

(b) the water body modification or relocation or drainage ditch shall be treated as a naturally occurring water body for the purposes of this Act, and

(c) the approval holder or licensee is relieved of all further responsibilities with respect to the water body modification or relocation or drainage ditch.

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PART 5 - TRANSFER OF AN ALLOCATION UNDER A LICENCE

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Application for a Transfer of an Allocation of Water

81(1) An application for a transfer of an allocation of water under a licence must be made to the Director and must

(a) be in the form and manner specified by the Director,

- Currently it is very difficult to accommodate new licensees or additional uses of water in a fully allocated basin, or to enable existing water licensees to modify their systems to allow for more effective water conservation and management. An improved transfer system is proposed to address these difficulties. Part 5 sets out the proposed transfer system. To ensure that a transfer system supports and promotes the conservation and management of Alberta's waters, the Government intends to proceed cautiously in implementing any proposed transfer system.

  Under the proposed transfer system only those who hold a water licence would be able to transfer all or part of a water right. All transfers of licences would be on a voluntary basis and subject to strict Government review to ensure the public interest is protected.

  For more information refer to the Guide: Surface Water and Groundwater Rights - Transferability.

  For notice and appeal provisions relating to transfers of licences, refer to Part 8 (Notice and Environmental Appeal Board).

- In order to initiate the review process for transfers of licences, an application must be made to the Director. Specified information must accompany the application, and additional information must be provided on request.

(b) contain or be accompanied by any information specified by the Director, and

(c) be accompanied by any fee required by the regulations.

(2) The Director may require an applicant to submit any additional information that the Director considers necessary within any time period specified by the Director.

(3) Where an application is made by a person other than the licensee, the written consent of the licensee shall be provided to the Director with the application.

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Approval of a Transfer of an Allocation

82(1) Subject to the requirement to conduct a public review under subsection (2), on application by a person in accordance with this Part, the Director may

(a) approve the transfer of an allocation of water under a licence, and issue a new licence for the transferred allocation of water subject to any terms and conditions the Director considers appropriate, including issuing the licence for a specified period of time, or

(b) refuse to approve the transfer of an allocation of water.

(2) The Director shall conduct a public review of a proposed transfer of an allocation of water, in the form and manner the Director considers appropriate, and may only approve a transfer where

In reviewing an application for a transfer of a licence, the Director must also ensure that the Environmental Assessment requirements under Part 2, Division 2 (Environmental Assessment Process), if applicable, have been complied with.

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- After holding a public review pursuant to subsection (2), the Director may approve or refuse a transfer of a licence. What constitutes a public review will be determined by the Director. Holding a public review will assist the Director in making a decision on whether a transfer of a licence will be approved. In making this decision the Director may consider factors set out under subsection 4.

(a) the allocation of water to be transferred is held under a valid licence,

(b) the quantity of water to be transferred does not exceed the allocation under the licence from which the transfer is to be made,

(c) in the opinion of the Director, the transfer does not impair the exercise of rights of any other licensee or household user,

(d) in the opinion of the Director, the transfer will not cause an adverse effect on the aquatic or riparian environment, including fish habitat.

(3) Notwithstanding subsection (2), the Director is not required to conduct a public review where the allocation of water to be transferred is not held under a valid licence.

(4) In making a decision under subsection (1), the Director,

(a) shall consider, with respect to the applicable area of the Province, the recommendations, matters and factors that must be considered in approving a transfer of an allocation of water, as set out in any applicable approved water management plan;

(b) may consider any existing, potential or cumulative

(i) effects on the aquatic or riparian environment, including but not limited to fish habitat,

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(ii) hydraulic, hydrological and hydrogeological effects, and

(iii) impacts on any other licensees and water users,

resulting from the transfer of the allocation of water; and

(c) may consider

(i) effects on public safety,

(ii) with respect to irrigation, the suitability of the land to which the allocation will be transferred, for irrigated agriculture,

(iii) the quantity of water that the licensee has historically diverted under the licence, and

(iv) any other matters applicable to the transfer of the allocation that the Director considers relevant, including any instream need or water conservation and management objective, where available.

(5) Where the Director issues a new licence under subsection (1)(a),

(a) (s)he may amend any term and condition of the licence from which the transfer is to be made, as specified in section 56 (General Amendment of Licences), with respect to the rate of flow and quantity of water diverted, or

(b) (s)he shall cancel the licence from which the transfer is to

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be made where all of the water allocated under that licence has been transferred.

(6) Where a transfer of an allocation of water is approved under this Part,

(a) the licence from which the transfer is made retains the priority number assigned to it, where that licence was not cancelled under subsection (5), and

(b) the new licence which is issued in respect of the transferred allocation is given the same priority number as the licence from which the allocation was transferred.

(7) Notwithstanding subsection (1), a licence for the temporary diversion of water may not be transferred.

(8) A transfer made under this Part may be made either permanently or for a specified period of time.

(9) On the expiry of a transfer of an allocation of water that has been made for a specified period of time, the Director may, in accordance with the regulations, take any necessary steps to reverse the transfer, including but not limited to

(a) restoring the licence from which the transfer of an allocation of water was made to its original form, and

(b) cancelling the licence which was issued with respect to the transferred allocation of water.

- The priority number of the transferred allocation of water remains the same as the licence from which it was transferred.

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Should transfers of licences be available both on a temporary and permanent basis?

If an existing licence with no specified term (expiry date) is transferred to a new user, should a new term be added to the new licence?

Does it make a difference if the licence which is being transferred to a new user is for the same purpose or a different purpose?

No Transfer of an Allocation of Water on Minister's Order

83(1) Where the Minister is of the opinion that a proposed transfer of an allocation of water under a licence is not in the public interest having regard to the purposes of this Act, the Minister may order that no transfer of an allocation of water be approved.

(2) Where the Minister makes an order under subsection (1), (s)he shall provide

(a) notice in writing to the applicant for the transfer, where an application has been submitted, and

(b) a copy of the order to the Director.

Water Conservation Holdback

84(1) Where

(a) it is specified in an approved water management plan that it is appropriate, or

(b) the Director is of the opinion that there is a need,

to protect the aquatic or riparian environment, including but not limited to fish habitat, or to implement an instream need or a water conservation and management objective established under section 20(1)(a), (b), (c) or (d) (Water Conservation and Management Objectives and Guidelines), the Director may withhold up to 10 per cent of an allocation of water under a licence that is being

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- Upon transfer of a licence, the Government may withhold up to 10% of an allocation of water that is being transferred for the purposes of reallocating water for other purposes, including instream protection. A Crown licence may be issued with respect to the withheld water.

[see: sections 19, 20, 52(2)]

Should the Government have the right to withhold a set percentage of water for reallocation?

If so, what percentage should be withheld?

transferred, in accordance with criteria specified in the regulations, under the terms and conditions of the licence from which the allocation is being transferred.

(2) Where there has been a holdback of an allocation of water under subsection (1), the Director may issue a licence to Her Majesty in right of Alberta under section 52(2) (Issuance of Licences) for an allocation of that water.

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With respect to the water which has been withheld under section 84 (Water Conservation Holdback), should there be the ability to issue a Crown licence, under section 52(2), for all of the purposes for which the water was withheld under section 20(1)(a), (b), (c) or (d)(Water Conservation and Management Objectives and Guidelines)?

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PART 6 - WATER MANAGEMENT WORKS, UNDERTAKINGS AND FLOOD RISK AREAS

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- This Part brings forward from the *Water Resources Act (WRA)*, provisions which relate to water management works and undertakings, and flood control.

  Generally an "undertaking" is a plan or scheme, and a "works" is the actual physical plant or structure which results from the undertaking.

  For more information refer to the Guide: Programs and Projects.

  For the definition of:
  - "works" see: 1(ooo)
  - "undertaking" see: 1(fff)

Construction and Operation by Minister

85(1) Where the Minister is of the opinion that it is in the public interest to do so, (s)he may

(a) construct, operate, maintain, repair, control, replace and remove a works, and

(b) initiate and carry out an undertaking,

for any purpose that the Minister considers appropriate.

- This provision allows the Minister, where it is in the public interest, to construct and operate a works, and initiate and carry out an undertaking.

(2) The construction, operation, maintenance, repair, control, replacement or removal of a works or the initiation or carrying out of an undertaking may be

(a) undertaken by or under the direction of the Director or an officer of the Department, if the Minister is of the opinion that it is desirable or expedient to do so, or

(b) delegated to any person or other department of the Government.

Contract Re Works or Undertaking

86 The Minister may enter into a contract with any person for the construction, operation, maintenance, repair, control, replacement or removal of a works, or the initiation or carrying out of an undertaking, under this Act.

- The Minister may enter into contracts relating to a works and undertaking.

Application of Public Works Act

87 Except where otherwise provided for, the provisions of the *Public Works Act* apply to tenders and contracts made with respect to the construction, operation, maintenance, repair, control, replacement and removal of a works under this Part.

- Generally the provisions of the *Public Works Act (PWA)* will apply to tenders and contracts relating to works and undertakings. The *PWA* is provincial legislation which provides general rules for all public works.

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Tenders

88(1) In addition to the provisions regarding tenders provided for in the *Public Works Act* the Minister may, when it appears practical or expedient to do so, call for tenders by invitation, public advertisement or by public notice for the operation, maintenance, control, replacement and removal of a works, or the initiation or carrying out of an undertaking.

(2) The Minister may provide notice of a call for a tender or any extension of time for receiving a tender in accordance with the regulations.

- This clarifies existing Departmental policies relating to tenders for a works or undertaking.

Withdrawal of a Tender

89(1) A tender may be withdrawn at any time up to the time fixed for receiving tenders, but only on a request in writing signed by the tenderer or his or her agent.

(2) No person may withdraw a tender at or after the time fixed for receiving tenders

(a) until Her Majesty in right of Alberta has entered into a contract with some other person for the performance of the work, the initiation or carrying out of the undertaking or the supplying of the materials specified in the notice inviting tenders, or

(b) until 60 days after the time fixed for receiving tenders,

whichever first occurs.

- Similar to section 88 (Tenders), this provision clarifies existing Departmental policies relating to tenders for a works or undertaking.

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Charges for Services

90 Notwithstanding the *Public Utilities Board Act*, the Director may, in accordance with the regulations, impose and collect charges for any service with respect to or the use of a works under the control of the Minister.

▼ This allows charges to be imposed and collected for any service or use of a works controlled by the Minister. Use of works agreements or regulations are methods of doing this.

Acquisitions and Take-Overs by the Minister

91(1) The Minister may, if (s)he is of the opinion that it is in the public interest to do so, acquire

(a) by purchase or by expropriation under section 168 (Purchase or Expropriation of Land, Works and Undertakings),

(b) through any gift or bequest to the Government,

a works that is under construction or completed or an undertaking that has been initiated or carried out.

▼ Where it is in the public interest to do so, the Minister is empowered to acquire or take-over and operate a works or undertaking. This provision also specifies what powers or obligations the Minister has once a works or undertaking has been acquired or taken over.

(2) The Minister may, if (s)he is of the opinion that it is in the public interest to do so, take over and operate a works that is under construction or completed or carry out an undertaking where

(a) the works or undertaking has been abandoned,

(b) it is necessary for public safety,

(c) in the opinion of the Director, the works is being or has been operated or the undertaking is being or has been

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initiated or carried out contrary to the terms and conditions of an approval or licence or this Act,

(d) the licence or preliminary certificate with respect to the works or undertaking has been suspended or cancelled, as the case may be, under section 58 (Suspension and Cancellation of Licences) or 77 (Cancellation of Preliminary Certificates),

(e) the person, approval or preliminary certificate holder or licensee responsible for the works or undertaking is bankrupt or insolvent,

(f) an emergency has been declared under section 109 (Declaration of an Emergency by Lieutenant Governor in Council).

(3) Where a works or undertaking has been acquired or taken over under subsection (1) or (2), the Minister has, in addition to all the powers provided under this Act, all the powers, duties and privileges of the approval or preliminary certificate holder or the licensee, as the case may be, for the purpose of

(a) operating a works or carrying out an undertaking that has been acquired or taken over,

(b) providing the necessary revenue, and

(c) generally carrying on the business with respect to the works or undertaking.

(4) On acquiring or taking over a works or undertaking under subsection (1) or (2), the Minister is entitled to recover and receive

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(a) from any person under any contract with the approval or preliminary certificate holder or licensee for the supply of water, all money then accrued to the approval or preliminary certificate holder or licensee,

(b) from all water users, all money that they would have been under an obligation to pay in respect of the water supply if the approval or preliminary certificate holder or licensee had continued the operation of the works or the initiation or carrying out of the undertaking.

(5) Where the Minister has acquired or taken over a works or undertaking under subsection (1) or (2) for irrigation purposes, the Minister has all the powers, privileges and immunities of a board of directors of an irrigation district.

(6) The Minister has the power to define from time to time the parcels of land that are to be served by the works or undertaking that is acquired or taken over under subsection (1) or (2).

(7) Where the Minister has acquired or taken over a works or undertaking under this section

(a) for the purposes of an emergency and public safety, the Minister may pay compensation to the approval or preliminary certificate holder or the licensee for any losses incurred by the approval or preliminary certificate holder or the licensee as a result of the acquisition or take-over, in the manner and amount the Minister considers appropriate,

(b) for any other purpose other than specified in clause (a), the Minister shall not pay any compensation to any person.

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Disposal of Works or Undertaking

92 The Minister may, if (s)he is of the opinion that it is in the public interest to do so, dispose of a works or undertaking acquired or taken over under section 91 (Acquisitions and Take-overs by the Minister) by sale or any other means.

▼ This provision allows the Minister, where it is in the public interest, to dispose of a works or undertaking.

Resumption of Possession and Operation

93 Where the Minister has acquired or taken over a works or undertaking under section 91 (Acquisitions and Take-Overs by the Minister), and has not disposed of the works or undertaking under section 92 (Disposal of Works or Undertaking), the approval or preliminary certificate holder or the licensee, as the case may be, is entitled to resume the possession and operation of it at any time where the Minister considers it to be appropriate, on

(a) paying to the Minister any costs incurred by the Minister in the operation of the works or the carrying out of the undertaking, as specified by the Minister, and

(b) satisfying the Minister of his or her ability to operate the works or carry out the undertaking.

▼ Where certain criteria are met, the approval or preliminary certificate holder, or the licensee may resume possession and operation of a works or undertaking.

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Use of Land Under the Administration of the Minister

94 The Director may, in accordance with the regulations,

(a) permit, restrict, prohibit or impose any conditions on

▼ This provision allows the Director to control activity on lands controlled or administered by the Minister for the purposes of water conservation and management.

(i) the use for any purpose by a person, including but not limited to use by a person's animals, of any land or part of any land,

(ii) the use of any reservoir or part of any reservoir,

(iii) the use, speed, direction of travel, stopping, leaving or parking of any vehicle or thing on any land or reservoir,

(iv) the erection of signs or devices on land, and

(v) any nuisance or noise on land,

that is under the administration or control of the Minister for the purposes of water conservation and management, and for the purposes of clause (i), includes the use of any area of land appurtenant to or used in connection with a works or undertaking in which Her Majesty in right of Alberta has an interest;

(b) seize, remove or retain any vehicle or thing parked or left in contravention of the regulations, where the vehicle or thing is located on land or a reservoir under the administration or control of the Minister for the purposes of water conservation and management.

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Flood Risk Areas

95(1) Where the Minister is of the opinion that there is or may be a risk to human life or property as a result of flooding, the Minister may designate, in accordance with the regulations,

▼ This provision allows the Minister to designate flood risk areas.

(a) any area of land in the Province as a flood risk area, including on an interim basis, and

(b) specify any acceptable uses with respect to the flood risk area.

(2) Where the Minister has made a designation under subsection (1)(a),

(a) no further Government works or undertaking shall be located or carried out,

(b) no Government financial assistance will be given to any person who engages in a use other than a use specified under subsection (1)(b), and

(c) Government disaster assistance programs will be restricted,

in the designated flood risk area, after the designation has been made, except as specified in the designation.

(3) The Minister shall consult with the local authority that is responsible for a proposed flood risk area prior to making a designation under subsection (1).

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PART 7 - REMEDIAL MEASURES

DIVISION 1- COOPERATIVE RESOLUTION OF DISPUTES

Dispute Resolution

96 Where two or more persons are unable to resolve a complaint or dispute with respect to a matter under this Act, any one of the persons involved in the complaint or dispute may make a request to the Director that the matter be reviewed.

- This Part allows for proactive and preventive actions to be taken regarding water conservation and management. It includes mechanisms for dispute resolution, water management orders and the power to declare emergencies.

  For more information refer to the Guide: Remedial Measures.

  For notice and appeal provisions relating to water management orders, refer to Part 8 (Notice and Environmental Appeal Board).

- This Division provides a dispute resolution mechanism which could be used to resolve water management disputes.

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Mediation

97(1) Where a review of a complaint or dispute has been conducted, the Director may appoint a mediator in accordance with the regulations to assist in resolving the complaint or dispute where

(a) the Director is of the opinion that there has not been a contravention of this Act with respect to the complaint or dispute, and

(b) the persons involved in the complaint or dispute are in agreement that the matter should be referred to a mediator.

(2) The Director may require all or part of the costs of a mediator to be paid by the persons involved in the complaint or dispute who participated in the mediation.

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▼ Where a Director has received a request for the review of a complaint or dispute, the Director may appoint a mediator to assist in resolving the dispute or complaint.

What sort of dispute resolution mechanism do you think would be most appropriate and should it be set out in legislation?

Should recommendations made under a dispute mechanism have to be followed?

If a mediator is used, as set out in section 97 (Mediation), should the parties have to agree on the mediator or should the Minister be able to appoint one?

Who should be a party to the mediation and who should pay for the mediation?

If no agreement can be reached through mediation what should happen?

DIVISION 2 - REMOVAL OF WORKS AND OBSTRUCTIONS AND WATER MANAGEMENT ORDERS

- Division 2 contains right of entry provisions for the removal of works and obstructions, and provisions for issuing water management orders.

Removal of Works and Obstructions and Remedial Measures

98 The Director or any person authorized in writing by the Director may, without incurring any liability, enter on any land and remove, breach, destroy or otherwise render ineffective

(a) a works constructed without an approval,

(b) a works not constructed in accordance with an approval,

(c) a works referred to in an approval or licence that has expired or has been cancelled, or

(d) a dam constructed by beaver, or any natural or other obstruction, including but not limited to an obstruction formed by soil, debris, ice or vegetation, where the dam or obstruction causes the diversion of or interferes with the flow of any water,

where there is an interference with the rights of any licensee or water user, or with private or public property, as a result of the works, dam or obstruction.

- Situations may arise where works or obstructions, such as beaver dams, interfere with the rights of a licensee or water user, or with private or public property. Under this provision, a Director or an authorized person may enter the area where the works or obstruction is located and remove the works or obstruction.

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Issuance of Water Management Orders

99(1) Subject to subsection (4), an inspector or the Director may issue a water management order

(a) to any person for the purposes of administering priority of rights under this Act where the inspector or the Director is of the opinion that the issuance of the order will provide a remedy with respect to priority of rights;

(b) to the holder of an approval or preliminary certificate, a licensee or an owner of a works,

(i) where, in the opinion of the inspector or Director, there has been a failure to maintain, repair, improve, alter or replace a works referred to in the approval, preliminary certificate or licence, or

(ii) where all or part of the works referred to in the approval, preliminary certificate or licence fails or collapses;

(c) to any person responsible for

(i) a works that does not require an approval,

(ii) a diversion of water that does not require a licence,

(iii) an activity that does not require an approval,

where, in the opinion of the inspector or Director, an adverse effect on the aquatic or riparian environment

▼ This provision allows for the issuance of water management orders. These orders will enable proactive and preventive action to be taken where there is a threat to Alberta's water resources or the aquatic or riparian environment, or where proactive measures are required to promote effective water management. These orders do not apply where there has been a contravention of the Discussion Draft.

Water management orders may be issued by either the Director or an inspector. Inspectors may only issue an order for 4 days and are restricted as to what terms they can include in a water management order.

[see: sections 99(4), 101(2)]

A water management order may also be issued in regards to an emergency under section 109 (Declaration of an Emergency by Lieutenant Governor in Council).

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occurs or may occur;

(d) to any person holding a licence for the temporary diversion of water where the inspector or Director is of the opinion that the diversion of water should be suspended;

(e) to any owner or occupier of land where on that land

(i) there is any dam constructed by beaver, or any natural or other obstruction, including but not limited to an obstruction formed by soil, debris, ice or vegetation, and in the opinion of the inspector or Director, the dam or obstruction causes the diversion of or interferes with the flow of water,

(ii) a flood, in the opinion of the inspector or Director, occurs or may occur;

(f) to a person responsible for an activity, diversion of water or operation of a works for the diversion of water, where the inspector or Director is of the opinion that the activity, diversion or operation of the works occurs or may occur and causes or may cause a significant adverse effect on the aquatic or riparian environment, human health or safety or property.

(2) Where the Director is of the opinion that water is not being conserved or that a person has wasted any water diverted under the authority of this Act, and it is contrary to the Water Conservation Guideline, the Director may issue a water management order for conservation purposes to any person.

(3) The Minister may pay compensation to an approval or

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preliminary certificate holder or licensee for any losses incurred by the approval or preliminary certificate holder or licensee as a result of a water management order, in the manner and amount the Minister considers appropriate, where

(a) a water management order is issued under subsection (1)(f) with respect to an activity, diversion of water or operation of a works for the diversion of water that has been expressly authorized by an approval, preliminary certificate or licence, and

(b) the significant adverse effect on the aquatic or riparian environment, human health or safety or property was reasonably foreseeable by the Director at the time the approval, preliminary certificate or licence was issued.

(4) An inspector may only issue a water management order under subsection (1) for a period of up to 4 days.

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Requirements of an Inspector in Issuing a Water Management Order

100 Where an inspector issues a water management order, the inspector shall submit a copy of it to the Director immediately after issuing it.

Terms of a Water Management Order

101(1) A water management order issued under section 99 (Issuance of Water Management Orders) by the Director may

▼ This provision sets out what may be ordered under a water management order.

(a) order the person to whom it is directed to take any measures that the Director considers necessary, including but not limited to any or all of the following:

(i) make any inquiries into the subject matter of the order;

(ii) submit to the Director

(A) any information on the subject matter of the order, or

(B) a proposal or plan for the Director's approval on any action, including but not limited to conducting an examination or survey of a water body that will be undertaken with respect to the subject matter of the order;

(iii) remove, breach, destroy or otherwise render ineffective a

(A) works placed, erected or constructed without an approval,

(B) works that is no longer required or for which an approval or licence has been cancelled or is no longer in effect,

(C) natural or other obstruction to the diversion or flow of water caused in any manner;

(iv) maintain, repair, improve, alter, replace or remove a works;

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(v) operate a works for a specified result or in a specified manner;

(vi) cease construction or operation of an activity or diversion of water for a specified period;

(vii) stop, shut down or suspend an activity, diversion of water, operation of a works for the diversion of water or thing for a specified period;

(viii) minimize or remedy any adverse effects on the aquatic or riparian environment, human health or safety or property;

(ix) stop wasting water and comply with the Water Conservation Guideline;

(x) carry out any emergency measures that the inspector or Director, as the case may be, considers necessary;

(xi) restore or reclaim the area affected to a condition satisfactory to the Director;

(xii) report on any matter ordered to be done in accordance with the directions set out in the order;

(xiii) maintain records on any relevant matter;

(xiv) report periodically to the Director; and

(xv) take any other measure that the inspector or Director, as the case may be, considers necessary;

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(b) contain provisions specifying

(i) the manner or method of, or the procedures to be used in carrying out the measures required by the order,

(ii) the time within which any measure required by the order is to be commenced and the time within which the order or any portion of the order is to be complied with, and

(iii) the apportionment of the cost of doing any of the work or carrying out any of the measures specified in the order.

(2) A water management order issued by an inspector under section 99 (Issuance of Water Management Orders) may contain any of the following provisions listed under subsection (1):

(a) clause (a)(v) (Operate a Works);

(b) clause (a)(vi) (Cease Construction or Operation);

(c) clause (a)(vii) (Stop or Shut Down);

(d) clause (a)(x) (Carry out Emergency Measures);

(e) clause (b)(i) (Specify Procedures); and

(f) clause (b)(ii) (Specify Time).

(3) A water management order shall be served on the person to whom it is directed.

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(4) Where a water management order requires an approval or preliminary certificate holder or licensee to carry out an activity or diversion of water that is not specified in or is contrary to the approval, preliminary certificate or licence, the approval or preliminary certificate holder or licensee, is not in violation of this Act.

Joint and Several Liability under Water Management Orders

102 Where a water management order is directed to more than one person, all persons named in the order are jointly responsible for carrying out the terms of the order and are jointly and severally liable for payment of the costs of doing so, including any costs incurred by the Director under section 105 (Failure to Comply with a Water Management Order).

Amendment and Cancellation of Water Management Orders

103(1) The Director may on his or her own initiative

(a) amend a term or condition of,

(b) cancel, or

(c) amend a clerical error in,

a water management order.

▼ Amendments to and cancellations of water management orders may be made in accordance with this provision.

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(2) The Director may exercise powers under subsection (1) notwithstanding that the original water management order may have been issued by an inspector.

(3) A copy of a water management order amended under subsection (1) shall be served on the same person to whom the original order was directed.

Court Order for Compliance

104(1) If the person to whom a water management order is directed fails to comply with the water management order, the Minister may apply to the Court of Queen's Bench for an order of the Court directing that person to comply with the water management order.

(2) This section applies whether or not a conviction has been adjudged against the person to whom the water management order is directed for an offence under this Act in respect of the subject matter that gave rise to the issuing of the water management order.

- This provision enables the Court of Queen's Bench to issue an order directing a person to comply with a water management order. Failing to comply with a water management order is an offence under section 144 (Offences), and may result in an enforcement order being issued or prosecution.

Failure to Comply with a Water Management Order

105(1) If the person to whom a water management order is directed fails to comply with the order, the Director may take whatever action the Director considers necessary to carry out the terms of the order.

(2) Costs incurred by the Director under this section are recoverable by the Government

- Where there is failure to carry out a water management order, the Government may carry out the terms of the order, and recover the costs from the person to whom the order was issued.

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(a) in an action in debt against the person to whom the water management order is directed, or

(b) by order of the Minister directing any person who has acquired or purchased land from the person to whom the water management order is directed to pay to the Minister instead of to the vendor an amount not exceeding the amount owing in respect of the costs.

(3) For the purposes of this section, the costs referred to in subsection (2) include, without limitation any costs incurred in administering, investigating and responding to

(a) any matter to which the water management order relates, or

(b) any failure to comply with the water management order.

(4) A purchaser of land who pays an amount to the Minister under subsection 2(b) is discharged from any obligation to pay that amount to the vendor.

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Water Management Order where Person Unidentifiable

106(1) Where this Act authorizes the issuance of a water management order but none of the persons to whom the order could be issued are identifiable, the Director may nevertheless issue the order and take whatever action the Director considers necessary to carry out the terms of the order.

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(2) The costs of carrying out the terms of a water management order under this section are recoverable in accordance with section 105 (Failure to Comply with a Water Management Order) against any person to whom the water management order referred to in subsection (1) could have been issued, where the identity of such a person becomes known to the Director after the order is issued.

DIVISION 3- EMERGENCIES

- This Division provides mechanisms to deal with water related emergencies in Alberta.

Emergency Measures

107(1) Where an inspector, investigator or the Director is of the opinion that an activity, diversion of water or operation of a works for the diversion of water

(a) occurs or may occur, and

(b) causes or may cause an immediate and significant adverse effect on the aquatic or riparian environment, human health or safety or property,

- This provision allows for emergency measures to be taken where it is necessary to prevent immediate and significant damage to the aquatic or riparian environment, or to human health or safety, or property. This would be used, for example, where a dam is in imminent danger of failing, there is not time to issue a water management order and it is necessary to take emergency measures.

the inspector, investigator or Director may take any emergency measures that the inspector, investigator or Director considers necessary to prevent immediate and significant damage to the aquatic or riparian environment or to human health or safety or property.

(2) Subsection (1) applies whether or not the activity, diversion or operation is or was expressly authorized by an approval, preliminary certificate or licence, or the approval or preliminary

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certificate holder or licensee is or was in compliance with the approval, preliminary certificate, licence or this Act.

Recovery of Costs for Emergency Measures

108 The costs of carrying out emergency measures under section 107 (Emergency Measures) are recoverable by the Government in an action in debt against the person who is responsible for the need to take the emergency measures.

- The costs of carrying out emergency measures may be recovered under this provision.

Declaration of an Emergency by Lieutenant Governor in Council

109(1) Notwithstanding anything in this Act or any approval, preliminary certificate or licence issued under this Act, the Lieutenant Governor in Council may declare an emergency in accordance with criteria specified in the regulations.

- Where emergency situations relating to water management arise, the Lieutenant Governor in Council may be called upon to declare an emergency. An example of this would be where a flood occurs and the operation of a reservoir is required. The criteria for determining whether an emergency exists could include severity and length of drought, number of water users affected and potential environmental impacts.

(2) Where an emergency has been declared under subsection (1), the Director may issue a water management order to any person

(a) suspending the operation of all or part of any approval, preliminary certificate or licence,

(b) suspending any diversion of water

(c) designating the purposes for which, and quantities in which water may be diverted or used, and

(d) ordering or containing any of the measures or provisions

What factors do you think should be used to decide when an emergency exists?

For more information refer to the Guide: Surface Water and Groundwater Rights - Emergency Shortages.

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under section 101 (Terms of a Water Management Order),

with respect to the area of the Province affected by the emergency.

(3) Holders of preliminary certificates or licensees affected by an order under subsection (1) may be entitled to compensation, as specified by the Lieutenant Governor in Council, for any losses incurred as a result of the order.

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- When an emergency is declared, water management orders could be issued which would supersede the "first in time, first in right principle". Persons affected by these orders may be entitled to compensation.

  As well, where possible, a predetermined, agreed upon plan regarding priority of use and sharing of shortages could be put into action. Authority for the development of emergency response plans could be provided for by regulation. The plans would be developed through the water management planning process.

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PART 8 - NOTICE AND ENVIRONMENTAL APPEAL BOARD

- Part 8 sets out the notice and appeal provisions under the Discussion Draft. These provisions support the Government's commitment to providing the public with every opportunity to understand and provide advice on decisions affecting water conservation and management.

DIVISION 1- NOTICE

DISCUSSION DRAFT

- Under this Division, specifics of the notification process are set out, including the circumstances under which notice is required, who is responsible for providing notice and to whom notice must be given.

  Generally notice is required at two stages of the decision-making process: when an application for an authorization is received by the Department; and when the decision to issue or refuse to issue the authorization is made. The notice provisions ensure that applicants and directly affected parties are informed of decisions made under the Discussion Draft and have the opportunity to appeal the decisions to the Environmental Appeal Board.

  For details of the appeal process see: Division 2 (Environmental Appeal Board) of this Part.

Notice of Applications

110(1) Subject to subsection (2) and any exemptions specified in the regulations, where the Director receives an application

- This provision specifies notice requirements relating to applications for approvals, preliminary certificates, licences or approval of a transfer of a licence.

(a) for an approval under section 36 (Application for an Approval);

(b) for a licence under section 51 (Application for a Licence);

(c) for a renewal of a licence under section 63 (Application for a Renewal of a Licence), and the Director has made a decision to conduct a public review of the licence renewal;

(d) to amend a term or condition of

(i) an approval under section 42 (General Amendment of Approvals),

(ii) a licence under section 56 or 57 (General Amendment of Licences), (Allowable Amendments for Conservation), or

(iii) a preliminary certificate under section 75 or 76 (Amendment of Preliminary Certificates), (Allowable Amendments for Conservation);

(e) for a transfer of an allocation of water under a licence under section 81 (Application for a Transfer);

the applicant shall provide notice of the application in accordance with the regulations.

(2) Notwithstanding subsection (1), notice does not have to be provided with respect to

(a) a licence for the temporary diversion of water;

(b) an amendment

Under what circumstances should there be a requirement for providing notice of an application for an authorization?

▼ Subsection (2) sets out certain circumstances where notice is not required.

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(i) to correct a clerical error,

(ii) of a monitoring, reporting or inspection requirement in an approval, preliminary certificate or licence,

(iii) of an extension of the expiry date of an approval, preliminary certificate or licence,

except as provided for in the regulations;

(c) the conveyance or other disposition of land or disposition of an undertaking to which an approval, preliminary certificate or licence is appurtenant under section 46 (Appurtenancy of Approvals to Land), 78 (Appurtenancy of Preliminary Certificates) or 62 (Appurtenancy of Licences).

(3) Notwithstanding subsection (1), where the Director proposes to amend an approval, preliminary certificate or licence on his or her own initiative under section 42(1)(c) (General Amendment of Approvals), 75(1)(c) (Amendment of Preliminary Certificates) or 56(1)(c) (General Amendment of Licences), the Director shall provide notice of the proposed amendment in accordance with the regulations.

(4) Where notice has been provided under subsection (1)(e), notice does not have to be provided under subsection (1)(d) for any amendments made to a licence in order to give effect to the transfer of an allocation of water under a licence.

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Waiver of Notice of Application

111(1) Notwithstanding section 110 (Notice of Applications), where the Director has received an application for

(a) an approval under section 36 (Application for an Approval),

(b) a licence under section 51 (Application for a Licence),

(c) an amendment of an approval, preliminary certificate or licence under section 42 (General Amendment of Approvals), 75 (Amendment of Preliminary Certificates), 76 (Allowable Amendments for Conservation), 56 (General Amendment of Licences) or 57 (Allowable Amendments for Conservation),

and the Director is of the opinion that

(i) there is an emergency,

(ii) the activity or diversion of water specified in the application for the approval or licence, or the proposed amendment is a minor matter within the meaning of the regulations, or

(iii) adequate notice of the subject matter of the application or the proposed amendment has already been provided or given,

the Director may waive the notice requirements set out in section 110 (Notice of Applications).

- The ability for the Director to waive the requirement to give notice under section 110 (Notice of Applications) is allowed where there is an emergency, for minor matters and where notice has already been provided. Generally, where notice of an application has been waived, notice of the Director's decision will be provided.

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(2) The Director may waive notice with respect to subsection 1(c)(iii) whether or not some or all of the adequate notice was given before the coming into force of this section.

Statement of Concern

112(1) Where notice is provided

(a) under section 110(1) (Notice of Applications) any person who is directly affected by the application or proposed amendment, and

(b) under section 110(3) the holder of the approval or preliminary certificate, or the licensee, as the case may be,

may submit to the Director a written statement of concern setting out that person's concerns with respect to the application or proposed amendment.

(2) A statement of concern must be submitted

(a) in the case of an approval, within 7 days after the last providing of the notice,

(b) in every other case, within 30 days after the last providing of the notice,

or within any longer period specified by the Director in the notice.

- Statements of concern may be submitted by directly affected persons or a holder of an authorization, where notice has been provided under section 110 (Notice of Applications).

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Notice to Applicants, Approval and Preliminary Certificate Holders and Licensees of Director's Decision

113(1) Where the Director issues or refuses to issue an approval or licence, or issues a preliminary certificate, (s)he shall give written notice to the applicant.

(2) Where the Director amends or refuses to amend an approval, preliminary certificate or licence, (s)he shall give written notice of his or her decision to the approval or preliminary certificate holder or licensee, as the case may be.

(3) Where the Director suspends or cancels an approval or licence under section 43 (Suspension and Cancellation of Approvals) or 58 (Suspension and Cancellation of Licences), or cancels a preliminary certificate under section 77 (Cancellation of Preliminary Certificates), (s)he shall give written notice of his or her decision to the approval or preliminary certificate holder or licensee, as the case may be.

(4) Where the Director makes a decision that no further allocation of water should be made under section 54 (Moratoria), (s)he shall provide notice in accordance with the regulations.

(5) Where the Director approves or refuses to approve a transfer of an allocation of water under a licence under section 82 (Approval of a Transfer of an Allocation), (s)he shall give written notice of his or her decision to the applicant for the transfer.

(6) Where the inspector or Director issues a water management order or an enforcement order, it shall be served on the person to whom it is directed.

- Notice requirements relating to applicants or holders of an authorization are set out under this provision. Generally, this type of notice will be required where there has been a decision to issue or refuse to issue an authorization.

Under what circumstances should there be a requirement for providing notice of a decision?

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(7) Where the Minister takes over a works or undertaking under section 91 (Acquisitions and Take-Overs by the Minister), the Minister or the Director

(a) shall give written notice to the owner of the works or undertaking, and

(b) where the works or undertaking is referred to in an approval, preliminary certificate or licence, shall give written notice to the approval or preliminary certificate holder or licensee, as the case may be.

(8) Where the Minister issues an order to use another person's works under section 53(3) (Using Works of Another), the order shall be served on the owner of the works.

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Public Notice of Director's Decision

114(1) Where the Director

(a) issues an approval,

(b) issues a preliminary certificate, or

(c) issues a licence where no preliminary certificate has been issued with respect to that licence, except for a licence to Her Majesty in right of Alberta implementing an instream need or a water conservation and management objective,

(d) amends an approval, preliminary certificate or licence,

the Director shall,

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▼ Notice requirements relating to the general public are set out under this provision. Generally, notice to the public is required where there has been a decision to issue or refuse to issue an authorization.

Notice requirements relating to approved water management plans are provided under section 18 (Notice of an Approved Water Management Plan).

(e) where notice of the application or proposed changes was waived by the Director under section 111 (Waiver of Notice of Application), provide or require provision of notice of the decision to any directly affected person in accordance with the regulations, or

(f) where notice of the application or proposed changes was provided under section 110 (Notice of Applications), give notice or require the giving of notice of the decision in accordance with the regulations to every person who submitted a statement of concern under section 112 (Statement of Concern).

(2) Where notice of an application was given under section 110 (Notice of Applications) and the Director refuses to

(a) issue an approval or licence, or

(b) amend an approval, preliminary certificate or licence,

the Director shall, in accordance with the regulations, give notice of his or her decision to any person who submitted a statement of concern in accordance with section 112 (Statement of Concern).

(3) Where the Director refuses to issue a licence implementing an instream need or a water conservation and management objective to Her Majesty in right of Alberta, (s)he shall provide notice in accordance with the regulations.

(4) Where the Director renews a licence under section 64 (Decision to Renew a Licence), and there has been a public review, the Director shall give notice of his or her decision to renew to any

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person who submitted a statement of concern under section 112 (Statement of Concern).

(5) Where the Director suspends or cancels an approval or licence or cancels a preliminary certificate under section 43 (Suspension and Cancellation of Approvals), 77 (Cancellation of Preliminary Certificates) or 58 (Suspension and Cancellation of Licences), (s)he shall provide notice of the suspension or cancellation in accordance with the regulations.

(6) Where the Director approves or refuses to approve a transfer under section 82 (Approval of a Transfer of an Allocation) , (s)he shall provide notice of his or her decision to every person who submitted a statement of concern under section 112 (Statement of Concern) in accordance with the regulations.

(7) In addition to notice specified in this section, the Director may also give notice to any other person (s)he considers appropriate.

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DIVISION 2 - ENVIRONMENTAL APPEAL BOARD

NOTES

- Division 2 allows applicants for and holders of authorizations, and directly affected parties to challenge specific decisions made under the Discussion Draft. The Environmental Appeal Board, which is an administrative tribunal established under the Alberta *Environmental Protection and Enhancement Act,* as amended, *(EPEA),* will hear appeals and make recommendations to the Minister.

  The circumstances under which an appeal can be heard, specifics of who can make an appeal, and the appeal process are provided for under this Division.

Environmental Appeal Board

115 The Environmental Appeal Board shall hear appeals as provided for in this Act.

When an Appeal Can Be Made

116(1) A notice of objection may be submitted to the Board by the following persons in the following circumstances:

(a) where the Director issues or amends an approval under section 37 (Issuance of Approvals) or 42 (General Amendment of Approvals), a notice of objection may be submitted

(i) by the approval holder or by any person who previously submitted a statement of concern in accordance with section 112 (Statement of Concern), in a case where notice of the application or proposed changes was previously provided under section 110 (Notice of Applications),

For more information refer to the Guide: Approvals and Licences - Appeals

See also:

- Part 3, *EPEA*
- Environmental Appeal Board Regulation, AR 114/93

▼ This provision sets out the circumstances under which an appeal may be made and who can make the appeal.

What kind of decisions should be appealable?

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(ii) or by any person who is directly affected by the Director's decision, in a case where the Director waived notice and no notice of the application was given by reason of section 111 (Waiver of Notice of Application);

(b) where the Director issues or amends a preliminary certificate, under section 71 (Issuance of Preliminary Certificate), 75 (Amendment of Preliminary Certificates) or 76 (Allowable Amendments for Conservation), a notice of objection may be submitted

(i) by the preliminary certificate holder or by any person who previously submitted a statement of concern in accordance with section 112 (Statement of Concern), in a case where notice of the application or proposed changes was previously provided under section 110 (Notice of Applications),

(ii) by the preliminary certificate holder or by any person who is directly affected by the Director's decision, in a case where the Director waived notice and no notice of the application was provided by reason of section 111 (Waiver of Notice of Application);

(c) in the case where no preliminary certificate has been issued with respect to a licence, where the Director issues or amends a licence under section 52 (Issuance of Licences), 56 (General Amendment of Licences) or 57 (Allowable Amendments for Conservation), a notice of objection may be submitted

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(i) by the licensee or by any person who previously submitted a statement of concern in accordance with section 112 (Statement of Concern), in a case where notice of the application or proposed changes was previously provided under section 110 (Notice of Applications),

(ii) by the licensee or by any person who is directly affected by the Director's decision, in a case where the Director waived notice and no notice of the application or proposed changes was provided by reason of section 111 (Waiver of Notice of Application);

(d) subject to clause (e), where the Director refuses to issue an approval or licence under section 37 (Issuance of Approvals) or 52 (Issuance of Licences), the applicant for the approval or licence, as the case may be, may submit a notice of objection;

(e) where the Director refuses to issue a licence to Her Majesty in right of Alberta for the purposes of implementing an instream need or a water conservation and management objective under section 52(2) (Issuance of Licences), the applicant for the licence and any directly affected person may submit a notice of objection;

(f) where the Director refuses to amend an approval, preliminary certificate or licence under section 42 (General Amendment of Approvals), 75 (Amendment of Preliminary Certificates), 76 (Allowable Amendments for Conservation), 56 (General Amendment of Licences) or 57

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(Allowable Amendments for Conservation), the applicant may submit a notice of objection;

(g) where the Director suspends or cancels an approval or licence under section 43 (Suspension and Cancellation of Approvals) or 58 (Suspension and Cancellation of Licences) or cancels a preliminary certificate under section 77 (Cancellation of Preliminary Certificates), the approval or preliminary certificate holder or the licensee, as the case may be, may submit a notice of objection;

(h) where the Director refuses to renew a licence under section 64 (Decision to Renew a Licence), the licensee may submit a notice of objection;

(i) where the Director renews a licence under section 64 (Decision to Renew a Licence), and where there has been a public review, any person who previously submitted a statement of concern in accordance with section 112 (Statement of Concern) may submit a notice of objection;

(j) where the Minister takes over any works or undertaking under section 91 (Acquisitions and Take-Overs by the Minister), the approval or preliminary certificate holder or licensee, or the owner of the works or undertaking, as the case may be, may submit a notice of objection;

(k) where the Director gives notice that no further applications for licences will be accepted under section 54 (Moratoria), a person who wishes to apply for a licence for any water that is the subject of the moratorium may submit a notice of objection;

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(l) where the Minister issues an order with respect to the use of another person's works under section 53(3) (Using Works of Another), the owner of the works may submit a notice of objection;

(m) where the Director issues a water management order (except a water management order with respect to priority of rights) under section 99 (Issuance of Water Management Orders), the person to whom the order is directed may submit a notice of objection;

(n) where an inspector or the Director issues a water management order with respect to priority of rights under section 99(1)(a) (Issuance of Water Management Orders), the person to whom the order is directed, or any person whose rights may be affected by the issuance of the order may submit a notice of objection only with respect to who has priority;

(o) where the Director issues an enforcement order under section 132 (Grounds for Issuing an Enforcement Order) directing

(i) the suspension or cancellation of an approval or licence or the cancellation of a preliminary certificate,

(ii) the stopping or shutting down of any activity, operation, diversion of water or thing,

(iii) the ceasing of construction, operation, maintenance, repair, control, replacement or removal of any works or the carrying out of an undertaking, or

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(iv) the removal, replacement, breach, destruction or otherwise rendering ineffective of any works or obstruction,

the person to whom the order is directed may submit a notice of objection;

(p) where the Director requires a person to pay an administrative penalty under section 153 (Administrative Penalties), the person to whom the notice of the administrative penalty is directed may submit a notice of objection;

(q) where the Director approves or refuses a request for a transfer under section 82 (Approval of a Transfer of an Allocation), the applicant and any person who submitted a statement of concern under section 112 (Statement of Concern) may submit a notice of objection.

(2) A notice of objection initiates an appeal of the decision to which an objection has been made.

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Exemption from Appeal

117 Notwithstanding section 116 (When an Appeal Can be Made), no notice of objection may be submitted

(a) where the Director refuses to issue an approval, preliminary certificate or licence, or refuses to approve a transfer of an allocation of water under a licence, pursuant to an order of the Minister under section 38, 72, 55 or 83

(No Approval, Preliminary Certificate, Licence or Transfer on Minister's Order);

(b) with respect to a licence for the temporary diversion of water;

(c) with respect to an amendment

(i) to correct a clerical error,

(ii) of a monitoring, reporting or inspection requirement in an approval, preliminary certificate or licence,

(iii) of an extension of the expiry date of an approval, preliminary certificate or licence;

(d) where there is an amendment as a result of a conveyance or other disposition of land or a disposition of an undertaking to which an approval, preliminary certificate or licence is appurtenant under section 46 (Appurtenancy of Approvals), 78 (Appurtenancy of Preliminary Certificates) or 62 (Appurtenancy of Licences).

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Submission of Notice of Objection

118(1) A notice of objection must be submitted to the Board

(a) not later than 7 days after receipt of

(i) a copy of the water management order or enforcement order,

▼ A notice of objection is the document which initiates an appeal. This provision sets out the time periods for submitting a notice of objection.

(ii) in the case of an approval, notice of the decision objected to or the last provision of notice of the decision objected to, as the case may be;

(b) not later than 30 days after receipt of notice of the decision objected to or the last provision of notice of the decision objected to, as the case may be, in any other case.

(2) The Board may, on application made before or after the expiry of the period referred to in subsection (1), extend that period, where the Board is of the opinion that there are sufficient grounds to do so.

(3) A notice of objection must contain the information and be made in the manner provided for in the regulations.

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Conduct of Appeal

119(1) Subject to this section, on receipt of a notice of objection, the Board, shall within the period of time prescribed in the regulations,

(a) convene a panel of Board members

(i) to hear the appeal, and

(ii) to appoint a person to chair the panel;

(b) set a date for the hearing of the appeal; and

(c) conduct the hearing of the appeal.

▼ The specifics of the appeal process are outlined under this provision.

(2) When a panel is convened under subsection (1), the panel has all the powers of the Board and is subject to all the same duties as the Board, and a reference in this Act to the Board shall be read as a reference to the panel.

(3) The Board may, on application by any person who has submitted a notice of objection or on its own motion, extend any period of time prescribed in the regulations for the purposes of subsection (1) where the Board is of the opinion that there are sufficient grounds to do so.

(4) The Board may, with the consent of all the parties to the appeal

(a) advance the date set for the hearing of the appeal, or

(b) make its decision or its report to the Minister without conducting a hearing of the appeal.

(5) Nothing in this section precludes the Board from conducting any procedures to give effect to section 87 of the *Environmental Protection and Enhancement Act*.

(6) Section 85, 87, 88, 89, 90, 91, 92 and 93 of the *Environmental Protection and Enhancement Act* apply to a Board or panel that has been convened under subsection (1).

(7) Notwithstanding subsection (6), the Minister, Board or any court shall not grant a stay with respect to a water management order for the administration of priority of rights.

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Exemption from Compensation

120 Where an inspector or Director issues a water management order with respect to the administration of priority of rights, and that order or part of the order is successfully appealed by any person, no compensation shall be paid with respect to any impact on or losses incurred with respect to any person's priority of rights as a result of the issuance or appeal of the water management order.

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PART 9 - ENFORCEMENT

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Division 1 - INVESTIGATIONS

Right of Entry and Inspection by an Investigator

121(1) For the purpose of the administration of this Act, an investigator may, without a search warrant or order to enter and inspect and subject to section 122 (Private Dwelling Place), at any reasonable time, do any or all of the following:

(a) enter and inspect any place in which the investigator reasonably believes a works can be found, an undertaking has been initiated or carried out, an activity or diversion

NOTES

- The Discussion Draft encourages proactive and preventive measures for conserving and managing Alberta's water resources. However, in some cases enforcement action may be required to ensure compliance. A wide range of administrative and judicial tools for dealing with enforcement matters are included under this Part.

  For more information refer to the Guide: Enforcement.

  For notice and appeal provisions relating to enforcement, refer to Part 8 (Notice and Environmental Appeal Board).

  Search warrant provisions are included through the *Provincial Offences Procedure Act*.

- This Division enables investigations to be carried out to determine if a contravention of the Discussion Draft has occurred.

- This provision sets out the special circumstances under which an investigator may enter a place to carry out an investigation without a search warrant or order. It includes what the investigator may do while carrying out the investigation.

of water is being or has been carried out, or an obstruction occurs or may occur;

(b) enter and inspect any place that the investigator believes is relevant to any complaint made with respect to this Act;

(c) enter and inspect any place that the investigator reasonably believes is likely to contain documents related to an activity, diversion of water, operation of a works for the diversion of water or thing that is or is required to be the subject of an approval, a preliminary certificate, a licence, a certificate of completion, a water management order or an enforcement order;

(d) enter and inspect any place that the investigator reasonably believes is, or is required to be, the subject of or referred to in an approval, preliminary certificate, licence, certificate of completion, water management order or enforcement order.

(2) In the course of exercising powers under subsection (1), the investigator may do any or all of the following:

(a) require that any thing be operated, used, set in motion or require that any thing cease operation under conditions specified by the investigator;

(b) use or move any machine, structure, material or equipment in the place the investigator is inspecting in order to carry out the inspection;

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(c) take samples of any substance or thing;

(d) conduct tests or take measurements;

(e) require the production of any documents that are required to be kept under this Act or any other documents that are related to the purpose for which the investigator is exercising any power under subsections (1)(a) to (d);

(f) make copies of or take extracts from any documents referred to in subsection (1)(e);

(g) use any computer system at any place to examine any data contained in or available to the computer system;

(h) record or copy any information by any method;

(i) reproduce any record from data in the form of a printout or other intelligible output;

(j) take a printout or other output for examination or copying;

(k) use any copying equipment to make copies;

(l) take any photographs or electronic or audio-video records;

(m) make reasonable inquiries of any person, orally or in writing;

(n) initiate any other action that is necessary to carry out the investigation.

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(3) An investigator may remove documents that (s)he is entitled to examine or copy or otherwise reproduce but shall give a receipt for any documents removed to the person from whom they were taken and shall promptly return them on completion of the examination.

(4) An investigator who exercises the power set out in subsection (2)(m) may exclude the presence of any person during the questioning of the individual except for counsel for the individual being questioned.

Private Dwelling Place

122 An investigator may not enter a private dwelling place or any part of a place that is designed to be used and is being used as a permanent or temporary dwelling place except

(a) with the consent of the occupant of the place, or

(b) under the authority of an order to enter and inspect or a search warrant.

Duty to Stop a Vehicle or Vessel

123 The operator of a vehicle or vessel shall stop the vehicle or vessel when required to do so by an investigator who is readily identifiable as such.

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Order to Enter and Inspect

124(1) Where a justice is satisfied on evidence under oath by an investigator

(a) that there is reasonable ground for believing that it is appropriate for the administration of this Act for the investigator to do any thing set out in section 121 (Right of Entry and Inspection), and

(b) that the investigator may not be able to effectively carry out duties under this Act without an order under this section because

(i) no person is present to grant access to a place that is locked or is otherwise inaccessible,

(ii) a person has denied the investigator access to a place or there is reasonable ground for believing that a person may deny the investigator access to a place,

(iii) a person has prevented the investigator from doing any thing set out in section 121 (Right of Entry and Inspection) or denied the investigator access to any thing as a result of which the investigator is unable to do any thing set out in section 121,

(iv) there is reasonable ground for believing that a person may prevent an investigator from doing any thing set out in section 121 (Right of Entry and Inspection), or may deny the investigator access to any thing as a result of which the investigator may be unable to do any thing set out in section 121,

▼ In cases where an investigator is unable to enter a place, due to the reasons set out under this provision, an order to enter and inspect may be obtained.

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(v) it is impractical, because of the remoteness of the place to be inspected or because of any other reason, for the investigator to obtain an order under this section without delay if access is required, or

(vi) there is reasonable ground for believing that an attempt by the investigator to do any thing set out in section 121 (Right of Entry and Inspection) without the order might defeat the purpose of that section or endanger human life, health or the aquatic or riparian environment,

the justice may issue an order to enter and inspect authorizing the investigator to do any thing set out in section 121 (Right of Entry and Inspection) that is specified in the order for the period of time set out in the order.

(2) The period of time referred to in subsection (1) may not extend beyond 30 days after the date on which the order is made, but the order may be renewed for any reason set out in subsection (1) for one or more periods each of which is not more than 30 days.

(3) An application under subsection (2) may be made before or after the expiry of the period.

Order Without Notice

125 An order under section 124 (Order to Enter and Inspect) may be issued or renewed on application without notice.

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Powers to be Exercised at a Reasonable Time

126 An investigator exercising powers under section 124 (Order to Enter and Inspect) must do so at a reasonable time unless otherwise authorized in the order under that section.

Seizure Without Order or Search Warrant

127(1) An investigator may, without a court order or a search warrant, seize any thing that is produced to the investigator, or that is in plain view, during an inspection under section 121 (Right of Entry and Inspection) or in accordance with an order issued under section 124 (Order to Enter and Inspect) if the investigator has reasonable grounds to believe that there has been an offence committed under this Act and the thing will afford evidence as to the commission of the offence.

(2) The investigator may remove the thing seized or may detain it in the place where it is seized.

(3) The investigator shall inform the person from whom the thing was seized as to the reason for the seizure and shall give the person a receipt for it.

Bringing Seized Things Before a Judge

128 An investigator who seizes any thing under the authority of section 127 (Seizure Without Order or Search Warrant) shall deal with it the same way as if it were seized under the authority of a search warrant.

▼ This provision allows an investigator, under certain circumstances, to seize certain things without a court order or search warrant.

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Tele-Warrants

129(1) Where an investigator has reasonable grounds to believe that

(a) an offence has been committed under this Act,

(b) there is in a place any thing that will afford evidence as to the commission of the offence, and

(c) it would be impracticable to appear personally before a justice to make an application for a search warrant,

the investigator may submit an information on oath to a justice by telephone or other means of communication.

(2) An information submitted by telephone or other means of telecommunication shall be on oath and shall be recorded verbatim by the justice, who shall, as soon as practicable, cause to be filed with the clerk of the Provincial Court of Alberta nearest to the area in which the tele-warrant is intended for execution, the record or a transcription of the record certified by the justice as to time, date and contents.

(3) For the purposes of subsection (2), an oath may be administered by telephone or other means of telecommunication.

(4) An information on oath submitted by telephone or other means of telecommunication shall include

(a) a statement of the circumstances that make it impracticable for the investigator to appear personally before a justice,

▼ This provision allows for a search warrant to be obtained by telephone or other means of telecommunication.

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(b) a statement of the alleged offence, the place to be searched and the things alleged to be liable to seizure,

(c) a statement of the investigator's grounds for believing that things liable to seizure in respect of the alleged offence will be found in the place to be searched, and

(d) a statement as to any prior application for a tele-warrant under this section or any other search warrant in respect of the same matter of which the investigator has knowledge.

(5) A justice who is satisfied that an information on oath submitted by telephone or other means of telecommunication

(a) is in respect of an offence committed under this Act and conforms to the requirements of subsection (4),

(b) discloses reasonable ground for dispensing with an information presented personally and in writing, and

(c) discloses reasonable ground for the issuance of a search warrant in respect of the offence,

may issue a tele-warrant to an investigator conferring the same authority respecting search and seizure as may be conferred by a search warrant issued by a justice before whom the investigator appears personally, and may require that the tele-warrant be executed within such time period as the justice may order.

(6) Where a justice issues a tele-warrant under subsection (5),

(a) the justice shall complete and sign the tele-warrant in the

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form prescribed in the regulations, noting on its face the time, date and place of issuance,

(b) the investigator, on the direction of the justice, shall complete, in duplicate, a facsimile of the tele-warrant in the form prescribed in the regulations, noting on its face the name of the issuing justice and the time, date and place of issuance, and

(c) the justice shall, as soon as practicable after the tele-warrant has been issued, cause the tele-warrant to be filed with the clerk of the Provincial Court of Alberta nearest to the area in which the tele-warrant is intended for execution.

(7) An investigator who executes a tele-warrant issued under subsection (5) shall, before entering the place to be searched, or as soon as is practicable thereafter, give a facsimile of the tele-warrant to any person present and ostensibly in control of the place.

(8) An investigator who, in any unoccupied place, executes a tele-warrant issued under subsection (5), shall on entering the place or as soon as is practicable thereafter, cause a facsimile of the tele-warrant to be suitably affixed in a prominent place within the place.

(9) An investigator to whom a tele-warrant is issued under subsection (5) shall file a written report with the clerk of the Provincial Court of Alberta nearest to the area in which the tele-warrant was intended for execution as soon as is practicable but within a period not exceeding 7 days after the tele-warrant has been executed, which report shall include

(a) a statement of the time and date the tele-warrant was

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executed, or if the tele-warrant was not executed, a statement of the reasons why it was not executed,

(b) a statement of the things, if any, that were seized pursuant to the tele-warrant and the location where they are being held, and

(c) a statement of the things, if any, that were seized in addition to the things mentioned in the tele-warrant and the location where they are being held, together with a statement of the investigator's grounds for believing that those additional things had been obtained by, or used in, the commission of an offence.

(10) The clerk of the Provincial Court of Alberta with whom a written report is filed pursuant to subsection (9) shall, as soon as is practicable, cause the report, together with the information on oath and the tele-warrant to which it pertains, to be brought before a justice to be dealt with in respect of any thing that was seized and is referred to in the report, in the same manner as if the things were seized pursuant to a search warrant issued by a justice on an information presented personally by an investigator.

(11) In any proceeding in which it is material for a court to be satisfied that a search or seizure was authorized by a tele-warrant under subsection (5), the absence of the information on oath, transcribed and certified by the justice as to time, date and contents, or of the original tele-warrant, signed by the justice and carrying on its face a notation of the time, date and place of issuance, is, in the absence of evidence to the contrary, proof that the search or seizure was not authorized by a tele-warrant issued under subsection (5).

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Disposal of Things Seized

130(1) Where a person is convicted of an offence under this Act and a thing relating to the conviction that was seized under this Part is then being detained, the thing shall, on the expiration of the time for taking an appeal from the conviction or on the final conclusion of the proceedings, as the case may be,

(a) be forfeited to the Government, if the court so directs, or

(b) be restored to the person from whom it was seized or to any other person who is entitled to possession of it, subject to any terms and conditions imposed by the court.

(2) Where a thing is forfeited under subsection (1)(a),

(a) the Minister may dispose of or destroy the thing, and

(b) the costs of the forfeiture and disposal or destruction are recoverable from the offender.

Assistance by Peace Officer

131 An investigator may be accompanied by a peace officer while exercising powers or carrying out duties under this Part.

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DIVISION 2 - ENFORCEMENT ORDERS

- Division 2 sets out the necessary provisions for issuing and administering enforcement orders.

Grounds for Issuing an Enforcement Order

132 The Director may issue an enforcement order to any person where in the Director's opinion that person has contravened this Act, except section 39 (Requirement to Maintain Approval Onsite), 69 (Requirement to Maintain Temporary Diversion Licence Onsite), 94 (Use of Land Under the Administration of the Minister) or 144(1)(m) (Failure to Provide Notice), whether or not that person has been charged or convicted in respect of the contravention.

- Under this provision, the Director is empowered to issue enforcement orders when the Discussion Draft has been contravened. Failure to comply with an enforcement order is considered an offence under section 144 (Offences) and could result in prosecution.

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Terms of an Enforcement Order

133(1) In an enforcement order, the Director may order any or all of the following:

- What can be ordered under an enforcement order is set out under this provision.

(a) the suspension or cancellation of an approval or licence or the cancellation of a preliminary certificate where one or more of the criteria specified under section 43 (Suspension and Cancellation of Approvals), 77 (Cancellation of Preliminary Certificates) or 58 (Suspension and Cancellation of Licences) has been met;

(b) the stopping or shutting down of any activity, diversion of water, operation of works for the diversion of water or thing either permanently or for a specified period where one or more of the criteria specified under section 43

(Suspension and Cancellation of Approvals), 77
(Cancellation of Preliminary Certificates) or 58
(Suspension and Cancellation of Licences) has been met;

(c) the ceasing of construction, operation, maintenance, repair, control, replacement or removal of any works or the carrying out of an undertaking until the Director is satisfied the construction, operation, maintenance, repair, control, replacement or removal or the carrying out of the undertaking will be done in accordance with this Act;

(d) the submission to the Director, for the Director's approval, of a proposal or plan to be undertaken by the person in order to remedy the contravention;

(e) the removal, replacement, breach, destruction or otherwise rendering ineffective

(i) a works placed, erected or constructed without approval,

(ii) a works that is no longer required or for which an approval or licence has been cancelled or is no longer in effect,

(iii) an obstruction to the flow of water caused in any manner;

(f) the repair of a works in order to protect public health or safety or property;

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(g) the minimization or remedying of any adverse effects on the aquatic or riparian environment or human health or safety or property;

(h) the restoration or reclamation of the area affected to a condition satisfactory to the Director;

(i) the operation of any works in a specified manner or in order to achieve a specified result;

(j) the specification of the manner or method of, or the procedures to be used in carrying out the measures required by the order;

(k) the reporting on any matter ordered to be done in accordance with the directions set out in the order;

(l) the maintenance of records on any relevant matter;

(m) the reporting periodically to the Director;

(n) the specification of the time within which any measure required by the order is to be commenced and the time within which the order or any portion of the order is to be complied with;

(o) the taking of any other measure that the Director considers necessary to facilitate compliance with the order or this Act.

(2) Where an enforcement order requires an approval or preliminary certificate holder or licensee to carry out an activity or diversion of water that is not specified in or is contrary to the

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approval, preliminary certificate or licence, the approval or preliminary certificate holder or licensee, is not in violation of this Act.

Amendment and Cancellation of Enforcement Orders

134(1) The Director may on his or her own initiative

(a) amend a term or condition of an enforcement order,

(b) cancel an enforcement order, or

(c) amend a clerical error in an enforcement order.

(2) A copy of an enforcement order issued under subsection (1) must be served on the same person to whom the original order was directed.

- Amendments to and cancellation of enforcement orders may be made under the circumstances set out in this provision.

Court Order for Compliance

135(1) If the person to whom an enforcement order is directed fails to comply with the enforcement order, the Director may apply to the Court of Queen's Bench for an order of the Court directing that person to comply with the enforcement order.

(2) This section applies whether or not a conviction has been adjudged against the person to whom the enforcement order is directed, for an offence under this Act in respect of the subject matter that gave rise to the issuing of the enforcement order.

- In cases where there is failure to comply with an enforcement order, a Court of Queen's Bench order directing compliance may be obtained.

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Failure to Comply with Enforcement Order

136(1) If the person to whom an enforcement order is directed fails to comply with the enforcement order, the Director may take whatever action the Director considers necessary to carry out the terms of the enforcement order.

(2) Costs incurred by the Director under this section are recoverable by the Government

(a) in an action in debt against the person to whom the enforcement order was directed, or

(b) by order of the Minister directing any person who has acquired or purchased land or a licence from the person to whom the enforcement order was directed to pay to the Minister instead of to the vendor an amount not exceeding the amount owing in respect of the costs.

(3) For the purposes of this section the costs referred to in subsection (2) include, without limitation any costs incurred in investigating and responding to

(a) any matter to which the enforcement order relates, or

(b) the failure to comply with the enforcement order.

- Where there is failure to comply with an enforcement order, the Government may carry out the terms of the order and recover the costs from the person to whom the order was issued.

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Joint and Several Liability

137 Where an enforcement order is issued to more than one person, all persons named in the order are jointly responsible for carrying out the terms of the order and are jointly and severally liable for payment of the costs of doing so, including any costs incurred by the Director under section 136(2) (Failure to Comply with Enforcement Order).

DIVISION 3 - CIVIL REMEDIES

▼ Division 3 includes provisions relating to civil remedies, protection from liability and injunctions.

Other Civil Remedies Not Affected

138 Subject to section 26 (Right to Divert by Riparian Owner or Occupant), 121 (Right of Entry and Inspection by Investigator), 139 (Protection from Liability) and 154 (Right of Entry by Inspector, Investigator or Director), no civil remedy for an act or omission is suspended or affected by reason only that the act or omission is an offence under this Act or gives rise to a civil remedy under this Act, and nothing in this Act shall be construed so as to repeal, remove or reduce any remedy available to any person at common law or under any Act of Parliament or of a provincial legislature.

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Protection From Liability

139 No action for damages may be commenced against

(a) a person who is an employee or agent of or is under contract to the Government,

(b) a person who is designated as an inspector or investigator under section 162(3) (Designation of Officials),

(c) a person who is an employee of the Government, a Government agency, a local authority or the Government of Canada or any agency of that Government, where there has been a delegation under section 160 (Delegation),

(d) a person who is an employee or agent of, or is under contract to, the Government, a Government agency or a local authority, where there has been a transfer of administration under section 161 (Transfer of Administration), or

(e) a member of the Environmental Appeal Board,

for anything done or not done by that person in good faith while carrying out his or her duties or exercising his or her powers under this Act including, without limitation any failure to do something when that person has discretionary authority to do something but does not do it.

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Injunction Re Commission of Offence

140(1) Where on the application of the Director, it appears to the Court of Queen's Bench that a person has done, is doing or is about to do any act or any thing constituting or directed toward the commission of an offence under this Act, the Court may issue an injunction ordering any person named in the application

(a) to refrain from doing that act or thing, or

▼ Where it appears that the Discussion Draft is or is about to be contravened, the Director may apply to the Court of Queen's Bench for an injunction directing the person responsible to refrain from taking a particular action.

(b) to do any act or thing that it appears to the Court may prevent the commission of an offence under this Act.

(2) At least 48 hours notice of the application must be given to the party or parties named in the application unless the Court is of the opinion that the urgency of the situation is such that giving of notice would not be in the public interest.

Recovery of Costs by the Government

141 The Government may recover, in an action in debt against any person who is convicted of an offence under this Act, the costs incurred by the Government

(a) in administering, investigating and responding to any matter related to the offence, or

(b) in carrying out or causing to be carried out any preventive or remedial action made necessary by the act or omission that constituted the offence.

Injunction Re Loss or Damage

142 Any person who has suffered, is suffering or is about to suffer loss or damage as a result of conduct that is contrary to this Act may apply to the Court of Queen's Bench for an injunction ordering the person engaged in the conduct to

(a) refrain from doing any act that it appears to the Court causes or will cause the loss or damage, or

▼ Under this provision, individuals have the right to apply to the Court of Queen's Bench for an injunction when they have suffered or are about to suffer damages from a contravention of the Discussion Draft.

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(b) do any act or thing that it appears to the Court prevents or will prevent the loss or damage.

DIVISION 4 - OFFENCES AND PENALTIES

▼ Offences under the Discussion Draft, and their corresponding penalties are set out under Division 4.

Limitation Period

143 A prosecution for an offence under this Act may not be commenced more than 2 years after the later of the date on which

(a) the offence was committed, or

(b) evidence of the offence first came to the attention of the Director.

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Offences

144(1) A person

▼ Specific offences are set out in this provision.

(a) who knowingly provides false or misleading information pursuant to a requirement under this Act to provide information,

(b) who provides false or misleading information pursuant to a requirement under this Act to provide information,

(c) who knowingly fails to provide information as required under this Act,

(d) who fails to provide information as required under this Act,

(e) who knowingly contravenes a water management order,

(f) who contravenes a water management order,

(g) who knowingly contravenes an enforcement order,

(h) who contravenes an enforcement order,

(i) who knowingly commences or continues a diversion of water for any purpose, or operates a works for the diversion of water except under the authority of this Act,

(j) who commences or continues a diversion of water for any purpose, or operates a works for the diversion of water except under the authority of this Act,

(k) who contravenes a term or condition of an approval, licence or preliminary certificate,

(l) who contravenes an order of the Lieutenant Governor in Council under section 109 (Declaration of an Emergency);

(m) who fails to provide notice as required by the Director under section 114(1)(f) (Public Notice of Director's Decision),

(n) who contravenes section 34 (Prohibition Against Commencing or Continuing an Activity Without an Approval), 39 (Requirement to Maintain Approval Onsite), 40 (Certificate of Completion), 49 (Prohibition

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NOTES

▼ Section 94 (Use of Land Under the Administration of the Minister) has been included as an offence under the Discussion Draft to indicate that it will be an offence under the regulations.

Where a Person is Unlicensed), 69 (Requirement to Maintain Temporary Diversion Licence Onsite), 94 (Use of Land Under the Administration of the Minister), 110 (Notice of Applications) or 156 (Interference),

is guilty of an offence.

(2) An approval or preliminary certificate holder or a licensee who fails to keep his or her works in a proper or safe condition is guilty of an offence.

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Penalties

145(1) A person who commits an offence referred to in section 34(1), 49(1), 144(1)(a), 144(1)(c), 144(1)(e), 144(1)(g) and 144(1)(i) is liable

(a) in the case of an individual, to a fine of not more than $100,000 or to imprisonment for a period of not more than 2 years, or to both a fine and imprisonment, or

(b) in the case of a corporation, to a fine of not more than $1,000,000.

(2) A person who commits an offence referred to in section 34(2), 40, 49(2), 110, 144(1)(b), 144(1)(d), 144(1)(f), 144(1)(h), 144(1)(j), 144(1)(k), 144(1)(l) and 156 is liable

(a) in the case of an individual, to a fine of not more than $50,000, or

NOTES

▼ Under this provision three levels of offences are set out: mens rea; strict liability; and absolute liability. Each level of offence has a corresponding penalty. The penalties are different for individuals and corporations.

(b) in the case of a corporation, to a fine of not more than $500,000.

(3) A person who commits an offence referred to in section 39, 69, 94 and 144(1)(m) is liable

(a) in the case of an individual, to a fine of not more than $250, or

(b) in the case of a corporation, to a fine of not more than $1000.

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Due Diligence Defence

146 No person shall be convicted of an offence under section 34(2), 40, 49(2), 110, 144(1)(b), 144(1)(d), 144(1)(f), 144(1)(h), 144(1)(j), 144(1)(k), 144(1)(l) and 156 if that person establishes on a balance of probabilities that (s)he took all reasonable steps to prevent its commission.

Additional Fine Where Monetary Benefits Acquired by Offender

147 Where a person is convicted of an offence under this Act and the court is satisfied that as a result of the commission of the offence monetary benefits accrued to the offender, the court may order the offender to pay, in addition to a fine under section 145 (Penalties), a fine in an amount equal to the court's estimation of the amount of those monetary benefits.

NOTES

- The due diligence defence is available for strict liability offences.

Continuing Offences

148 Every person who is guilty of an offence under this Act is liable on conviction for each day or part of a day on which the offence occurs or continues.

▼ If there is a continuing offence, the penalty can apply to each day or part of each day for the duration of the offence.

Liability of Directors and Officers

149 Where a corporation commits an offence under this Act, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is guilty of the offence and is liable to the punishment provided for the offence, whether or not the corporation has been prosecuted for or convicted of the offence.

▼ Under this provision, corporate directors and officers may be charged with offences committed by the corporation.

Liability of Public Officials

150(1) Where a person who is acting under the direction of

(a) a Minister of the Government,

(b) an official of the Government,

(c) a member of a council of a local authority, or

(d) the chief administrative officer or a designated officer of a local authority,

commits an offence under this Act, the Minister, official, member of council, chief administrative officer or designated officer is also

▼ Public officials may also be held liable for offences under the Discussion Draft.

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guilty of the offence and is liable for the punishment provided in the offence, if (s)he knew or ought reasonably to have known of the circumstances that constituted the commission of the offence and had the influence or control to prevent its commission, whether or not the other person has been prosecuted for or convicted of the offence.

(2) No person shall be convicted of an offence by reason of the operation of subsection (1) if that person establishes on a balance of probabilities that (s)he took all reasonable steps to prevent the commission of the offence by the other person referred to in subsection (1).

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Court Orders Relating to Penalty

151(1) When a person is convicted of an offence under this Act, in addition to any other penalty that may be imposed under this Act, the court may, having regard to the nature of the offence and the circumstances surrounding its commission, make an order having any or all of the following effects:

(a) prohibiting the offender from doing any thing that may result in the continuation or repetition of the offence;

(b) directing the offender to take any action the court considers appropriate to remedy or prevent any harm to the aquatic or riparian environment that results or may result from the act or omission that constituted the offence;

(c) directing the offender to publish, in the prescribed manner and at the offender's cost, the facts relating to the conviction;

NOTES

▼ Under this provision, a court, in addition to any penalty imposed under the Discussion Draft, may make an order directing any of the things set out under this provision.

(d) directing the offender to notify any person aggrieved or affected by the offender's conduct of the facts relating to the conviction, in the prescribed manner and at the offender's cost;

(e) directing the offender to post a bond or pay money into court in an amount that will ensure compliance with any order made pursuant to this section;

(f) on application to the court by the Minister made within 3 years after the date of conviction, directing the offender to submit to the Minister any information with respect to the conduct of the offender that the court considers appropriate in the circumstances;

(g) directing the offender to compensate the Minister, in whole or in part, for the cost of any remedial or preventive action that was carried out by the Government or caused by the offender to be carried out by the Government and was made necessary by the act or omission that constituted the offence;

(h) directing the offender to perform community service;

(i) requiring the offender to comply with any other conditions the court considers appropriate in the circumstances for securing the offender's good conduct and for preventing the offender from repeating the same offence or committing other offences.

(2) Where an offender contravenes an order made under subsection (1)(c), the Minister may publish the facts in compliance with the order.

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(3) Where the court makes an order under subsection (1)(g) or the Minister incurs publication costs under subsection (2), the costs constitute a debt to the Government.

(4) An order made under subsection (1) comes into force on the day on which it is made or on any other day specified in the order and continues in force for the period specified in the order, not to exceed 3 years.

Variation of Court Orders

152(1) Subject to subsection (2), where a court has made an order under section 151 (Court Orders Relating to Penalty), the court may, on application by the offender or the Attorney General, require the offender to appear before it and, after hearing the offender and the Attorney General, may make any or all of the following orders if it considers that the circumstances of the offender have changed so as to warrant such an order:

(a) an order changing the original order or the conditions specified in it;

(b) an order relieving the offender absolutely or partially from compliance with any or all of the order;

(c) an order reducing the period for which the original order is to remain in effect;

(d) an order extending the period for which the original order is to remain in effect for an additional period not to exceed one year.

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(2) Before making an order under subsection (1), the court may direct that notice be given to any persons the court considers to be interested and the court may hear any such persons.

(3) Where an application made under this section in respect of an offender has been heard by a court, no other application under this section may be made with respect to the offender except with leave of the court.

Administrative Penalties

153(1) Where the Director is of the opinion that a person has contravened a provision of this Act that is specified for the purposes of this section in the regulations, the Director may, subject to the regulations, by notice in writing given to that person, require that person to pay to the Government an administrative penalty in the amount set out in the notice for each day or part of a day the contravention occurs or continues.

(2) A person who pays an administrative penalty in respect of a contravention may not be charged under this Act with an offence in respect of that contravention.

(3) Where a person fails to pay an administrative penalty in accordance with a notice under subsection (1) or a decision of the Board under section 90 of the *Environmental Protection and Enhancement Act* (Decision of Board), the Government may recover the amount owing in respect of the penalty in an action in debt.

▼ This provision provides for administrative penalties. These penalties are designed to deal with less serious offences and allow penalties to be imposed without using the courts.

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PART 10 - GENERAL ADMINISTRATIVE MATTERS

DIVISION 1 - GENERAL RIGHT OF ENTRY POWERS AND INSPECTORS

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Right of Entry by Inspector, Investigator or Director

154(1) The powers under this section are in addition to any other powers to enter under this Act.

(2) An inspector, investigator, the Director or any person authorized in writing by the Director may, without incurring liability for doing so, enter any place or gain access to any place for the purpose of carrying out any work or doing any other thing that the inspector, investigator or Director is authorized under this Act to carry out or do.

(3) Any person who

(a) an inspector, investigator or Director considers necessary to enable the inspector, investigator or Director to carry out his or her duties and exercise his or her powers under this Act, and

NOTES

- Part 10 of the Discussion Draft includes additional right of entry powers and administrative provisions.

- Under this Division, general right of entry powers are provided. These are in addition to the right of entry powers to remove works and obstructions under Part 7 (Remedial Measures) and the right of entry powers under Part 9 (Enforcement).

- In order for specified persons to carry out work that has been authorized under the Discussion Draft, this general right of entry power has been provided.

(b) has been authorized by the inspector, investigator or Director to enter a place,

may enter that place with or without being accompanied by the inspector, investigator or Director without incurring any liability for doing so.

(4) Where a water management order or an enforcement order orders the person to whom it is directed to carry out any work or do any thing in respect of a place, that person and any other person carrying out the work or doing the thing on that person's behalf may, without incurring liability for doing so, enter the place for the purpose of carrying out the work or doing the thing required by the order.

(5) Where a judge of the provincial court is satisfied on evidence under oath that a person has been prevented from entering a place or has been denied access to a place that person is authorized to enter under this section, the judge may issue an order authorizing that person to enter the place for the purposes of carrying out any work or doing any thing that the person is authorized to carry out or do.

(6) An application made under subsection (5) must be made by

(a) the inspector, investigator or Director, as the case may be, in a case referred to in subsection (2) or (3), or

(b) the Director, in a case referred to in subsection (4).

(7) A person entering any place under the authority of this section

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(a) shall do so at a reasonable time unless authorized otherwise in an order, and

(b) shall give reasonable prior notice of intention to enter the place to the occupant of the place or, if there is no occupant, to the owner if it is practicable in the circumstances to do so.

Assistance to Inspectors and Investigators

155 The owner of and every person found in any place in respect of which an inspector or investigator is exercising powers or carrying out duties under this Act shall

(a) give the inspector or investigator all reasonable assistance to enable the inspector or investigator to exercise those powers and carry out those duties, and

(b) furnish all information relative to the exercising of those powers and the carrying out of those duties that the inspector or investigator may reasonably require.

Interference

156 No person shall interfere with

(a) an inspector, investigator or a Director who is exercising powers or carrying out duties, or attempting to do so, under this Act,

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(b) a person accompanying an inspector, investigator or a Director under the authority of section 154(3) (Right of Entry), or

(c) a person referred to in section 154(4) who is carrying out any work or doing any thing pursuant to a water management order or enforcement order.

Court Order Re Interference

157 If a person interferes with another person contrary to section 156 (Interference),

(a) an inspector, investigator or Director, as the case may be, in a case referred to in section 156(a) or (b), or

(b) a Director, in a case referred to in section 156(c),

may apply to the Court of Queen's Bench for an order prohibiting that person from so interfering, and the Court may make any order it considers appropriate.

Powers of Inspectors

158(1) For the purposes of acting under this Act an inspector has, subject to any terms and conditions of his or her designation, all the powers and is subject to all the duties of an investigator under section 121(1), 121(2) (Right of Entry and Inspection), 124 (Order to Enter and Inspect), 125 (Order Without Notice), 126 (Powers to be Exercised at a Reasonable Time) and 131 (Assistance by Peace Officer).

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(2) Where the Director has required an inspection of any works to be made, the report and finding of an inspector as to the capacity of the works for the purposes of this Act is final and conclusive.

Identification Card

159 The Director shall furnish an inspector or investigator with an identification card and on entering any place, the inspector or investigator shall, on request,

(a) produce the identification card, and

(b) identify and explain the nature of the powers or duties the inspector or investigator wishes to carry out under this Act.

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DIVISION 2 - MISCELLANEOUS ADMINISTRATIVE MATTERS

NOTES

▼ Division 2 provides additional administrative provisions to those found under Part 1 of the Discussion Draft.

Delegation

160(1) The Minister may in writing delegate to any employee of

(a) the Government or a Government agency, or

(b) a local authority,

▼ Under this provision, the Minister may delegate any of the Minister's powers under the Discussion Draft to any employee of the Alberta Government, an agency of the Alberta Government or a local authority. Consent of the employee's employer is required prior to the delegation.

any power or duty conferred or imposed on the Minister under this Act.

(2) Subsection (1) does not apply to the power or duty to make regulations.

(3) Prior to making a delegation under subsection (1), the Minister shall obtain the consent of the appropriate Minister under whose administration the employee is, or of the local authority, as the case may be.

(4) The Minister may take any steps that (s)he considers necessary to revoke a delegation under subsection (1) where the Minister considers it appropriate to do so.

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Transfer of Administration

161(1) The Minister may by agreement in writing or by regulation, and with the consent of the other Minister of the Government department or agency or local authority, transfer the administration of a provision of this Act to

(a) another Minister of the Government,

(b) a Government agency or another Government department, or

(c) a local authority,

and may specify the terms and conditions under which and subject to which the transfer is made.

(2) Where the administration of a provision of this Act has been transferred under subsection (1) and in the Minister's opinion the other Minister, the Government agency or the local authority is not properly administering the provision, the Minister may, after serving written notice on the other Minister, the Government agency or the local authority, cause inspectors or investigators designated by the Minister to carry out the provision.

(3) The Minister may take any steps that are necessary to revoke a transfer of administration under subsection (1) where the Minister considers it appropriate to do so.

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Designation of Officials

162(1) The Minister may by order designate employees of the Government under the administration of the Minister as Directors for the purposes of all or a part of this Act.

(2) The Minister may, with respect to any Director, and a Director may, with respect to himself, designate any employee of the Government under the administration of the Minister as an acting Director to act in that Director's place in the event of his or her absence or inability to act, and may specify any limitations on the scope of the designation.

(3) The Minister or the Director may by order designate as an inspector or investigator for the purposes of this Act any person who in the opinion of the Minister or the Director, as the case may be, is qualified to be so designated.

NOTES

- This provision allows for the designation of Directors. The designation of a Director is important because, while the Minister has responsibility for the overall administration of the water legislation, Directors will make specified decisions. In practice, because of the importance of the decisions that are being made, the individuals designated will generally be senior level employees.

(4) The Minister or the Director may not designate a person under subsection (2) or (3) without the approval of that person's principal or employer, as the case may be.

(5) A designation under subsection (3) may direct that the authority of the inspector or investigator be exercised subject to any terms and conditions that the Minister or Director prescribes in the designation, including limitations on the scope of the designation.

Environmental Protection Security Fund

163(1) All money required to be deposited with the Government as security in respect of

(a) an approval or licence under section 89 (Stay of Decision re Appeal), of the *Environmental Protection and Enhancement Act* and

(b) security provided under section 44 (Security) or 60 (Security),

shall be paid into the Environmental Protection Security Fund under section 30 (Environment Protection Security Fund) of the *Environmental Protection and Enhancement Act.*

(2) The Minister may direct the Provincial Treasurer with respect to all money deposited into the Environmental Protection Security Fund under subsection (1) in accordance with section 31 (Disposition of Money in Security Fund) of the *Environmental Protection and Enhancement Act*.

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Vicarious Responsibility

164 For the purposes of this Act, an act or thing done or omitted to be done by a director, officer, official, employee or agent of a corporation in the course of his or her employment or in the exercise of his or her powers or the performance of his or her duties shall be deemed also to be an act or thing done or omitted to be done by the corporation.

Documentary Evidence

165(1) In any proceeding under this Act,

(a) an analyst's certificate or an analyst's report of the results of an analysis purporting to be signed by an analyst,

(b) a certificate purporting to be signed by a person authorized to issue an approval, a preliminary certificate or a licence, stating that on a specified day or during a specified period, a person named in the certificate was or was not the holder of an approval or preliminary certificate, or licensee,

(c) a certificate setting out with reasonable particularity the conviction and sentence of a person for an offence under this Act purporting to be signed by

(i) the person who entered the conviction, or

(ii) the clerk of the court in which the conviction was entered,

and

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(d) a statement purporting to be signed by the Director setting out the day on which the Director became aware of the subject matter of any proceedings shall be admitted in evidence as prima facie proof of the contents of the certificate, report or statement, without proof of the signature or official character of the person signing the certificate, report or statement.

(2) A notice, approval, preliminary certificate, licence, water management order, enforcement order, consent or other order purporting to be signed by the person authorized to issue, make or give it is admissible in evidence without proof of the signature or official character of the person signing it.

Certificate of Analyst

166(1) No certificate or report of an analyst may be received in evidence unless the party intending to produce it has given to the party against whom it is intended to be produced reasonable notice of that intention together with a copy of the certificate or report.

(2) The party against whom a certificate or report of an analyst is produced may, with the leave of the court, require the attendance of the analyst for the purpose of cross-examination.

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Service

167 Where any notice, request, order, direction or other document is required to be given in writing or served under this Act, it shall be deemed to be sufficiently given or served if it is

(a) personally given to or served on the person to whom it is directed,

(b) sent by mail addressed to the person to whom it is directed at the last known address for that person,

(c) sent by means of a telecopier and received and printed by the receiving telecopier at the last known address for the person to whom it is directed, or

(d) in the case of a registered owner of land, sent by mail to the address for the registered owner shown on the assessment roll.

▼ Throughout the Discussion Draft specific documents are required to be given in writing or served on a person. This provision clarifies what is necessary for this requirement to be satisfied.

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Purchase or Expropriation of Land, Works and Undertakings

168(1) The Minister may purchase or expropriate any estate or interest in land, a works or undertaking, and may purchase any personal property in conjunction therewith for the purpose of

(a) carrying out an agreement or contract entered into by the Minister,

(b) a works to be constructed by the Minister,

▼ Currently under the *Water Resources Act (WRA)* there are several different provisions allowing for expropriation. These provisions have been consolidated and brought forward under this provision.

(c) a program or project related to the conservation and management of water, or

(d) any other matter under the administration of the Minister.

(2) Land, a works or undertaking acquired under this section shall be under the administration of the Minister unless, before or after the acquisition, the Lieutenant Governor in Council, by order, directs that it is under the administration of some other Minister.

(3) The Minister may not sell any public land under his or her administration, but (s)he may dispose of an interest in the land on any terms and conditions and for any period of time (s)he prescribes in the disposition.

Under the Discussion Draft, there are no powers to expropriate licences. Are there any situations where the Crown should be able to expropriate a licence?

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Adoption by Reference: Incorporation of Guidelines into Regulations

169 A regulation under this Act may adopt or incorporate in whole or part or with modifications documents that set out standards, codes, objectives, guidelines or other rules relating to any matter in respect of which a regulation may be made under this Act.

- Guidelines, objectives and other rules may provide further details on specific procedures and matters contained in the Discussion Draft or associated regulations. This provision allows such guidelines, objectives and other rules to be incorporated into a regulation and thus have the force of law.

PART 11 - TRANSITIONAL, CONSEQUENTIAL, REPEAL AND COMMENCEMENT

Specific transitional provisions will be included in the new *Water Conservation and Management Act*.

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- Transitional provisions are used to allow for the orderly transition from legislation that is going to be replaced to new legislation. Part 11, under the new water conservation and management legislation, will include necessary transitional provisions, for example, to ensure that existing rights in good standing will be protected.

  As well, this Part will provide for the repeal of the *Water Resources Act (WRA)* and specify required changes to other Alberta legislation to provide consistency with the new *Water Conservation and Management Act*.

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